

**CREDIT AGREEMENT**

**Dated as of October 30, 2020**

Among

**INPLAY OIL CORP.**

(as Borrower)

- and -

**ATB FINANCIAL**

(as Agent)

- and -

**BUSINESS DEVELOPMENT BANK OF CANADA,  
ATB FINANCIAL AND  
NATIONAL BANK OF CANADA**  
(as Lenders)

**\$25,000,000 TERM FACILITY**

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## CREDIT AGREEMENT

This Agreement is made as of October 30, 2020 among **INPLAY OIL CORP.**, as Borrower, **ATB FINANCIAL**, as Agent, and **BUSINESS DEVELOPMENT BANK OF CANADA**, **ATB FINANCIAL** and **NATIONAL BANK OF CANADA**, as Lenders.

### RECITALS

- A. The Borrower has requested that the Lenders make available to it a term credit facility in the aggregate principal amount of \$25,000,000.
- B. The Lenders are willing to make such facility available to the Borrower and the Agent has agreed to act in such capacity on the terms and subject to the conditions set out in this Agreement.

**THEREFORE**, the parties agree as follows:

### **ARTICLE 1** INTERPRETATION

#### **1.1** Definitions

In this Agreement, unless the context otherwise requires, the following terms have the respective meanings set out below (and all such terms that are defined in the singular have the corresponding meaning in the plural and *vice versa*):

**"13-Week Cash Flow"** means the Effective Date 13-Week Cash Flow, as the same is updated from time to time as required pursuant to Section 8.3(b)(ii)(B);

**"Abandonment/Reclamation Order"** means any abandonment, reclamation and/or non-compliance order or directive, or any requirement or demand to post security deposits, issued by an Energy Regulator which relates to any assets of the Borrower or any Subsidiary;

**"Affiliate"** means, with respect to a Person, any other Person that directly or indirectly Controls, or is Controlled by, or is under common Control with, that Person;

**"Agent"** means ATB Financial or any successor Agent appointed pursuant to Section 11.1;

**"Anti-Corruption Laws"** means all Applicable Laws of any governmental authority of any jurisdiction applicable to any Credit Party concerning or relating to bribery or corruption;

**"Anti-Money Laundering Laws"** means, individually and collectively, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), any other applicable anti-money laundering law or anti-terrorism financing law regarding any Sanctions or Sanctions List, and/or any "know your client" or "know your customer" matters (of Canada or otherwise), as in effect on the date hereof and as may in the future be amended from time to time;

**"Applicable Laws"** means, with respect to any Person, property, transaction or event, all present and future applicable laws, statutes, regulations, rules, orders, codes, policies, guidelines, protocols, treaties, judgments, awards, determinations and decrees of any legislative, governmental, regulatory, fiscal, administrative or monetary authority or of any

competent court, in each case, of any applicable country or jurisdiction or supranational or international body or organization, whether or not having the force of law;

**"Attributable Debt"** means, in respect of any lease (whether characterized as an operating lease under GAAP or not) entered into by a Person or a Subsidiary thereof as lessee, the present value (discounted at the rate of interest implicit in such transaction, determined in accordance with GAAP) of the lease payments of the lessee, including all rent and payments to be made by the lessee in connection with the return of the leased property, during the remaining term of the lease (including any period for which such lease has been extended or may, at the option of the lessor, be extended) but excluding for certainty, (a) amounts required to be paid on account of insurance, taxes, assessments, utility, operating and labour costs and similar charges and (b) amounts payable by a lessee in connection with the exercise of any end-of-term purchase option, early buy-out-option or any similar amounts payable at the election of the lessee;

**"BDC"** means Business Development Bank of Canada and its successors and assigns;

**"Borrower"** means InPlay Oil Corp., a corporation formed under the laws of the Province of Alberta;

**"Borrower Party"** means the Borrower or any of its Subsidiaries and **"Borrower Parties"** means, collectively, the Borrower and its Subsidiaries;

**"Borrowing Base"** has the meaning given to it in the Senior Credit Agreement;

**"Borrowing Base Shortfall"** has the meaning given to it in the Senior Credit Agreement;

**"Borrowing Base Facilities"** means the credit facilities under the Senior Credit Agreement under which the commitments of the Senior Lenders are limited by the Borrowing Base;

**"Borrowings"** means the advances in Dollars made from time to time under the Term Facility;

**"Branch of Account"** means a branch of the Agent where the Borrower has established an account for the Term Facility as designated by the Agent from time to time, after consultation with the Borrower;

**"Business Day"** means a day on which banks are open for business in Montréal (Québec), Toronto (Ontario) and Calgary (Alberta), excluding Saturday and Sunday;

**"CAD Prime Rate"** means the "Canadian Prime Rate" as defined in the Senior Credit Agreement, or otherwise (if not so defined) means the floating reference rate used by the Senior Lenders for determining interest rates for commercial loans denominated in Dollars made in Canada under the Senior Credit Agreement (however defined thereunder);

**"Canadian Dollar"** or **"Dollar"** or the symbol **"\$"** means lawful money of Canada;

**“Change of Control”** means and shall be deemed to have occurred if and when:

- (a) other than JOG Capital Corp. and its Affiliates, any Person or Persons acting jointly or in concert (within the meaning ascribed to such phrase in the *Securities Act* (Alberta)) shall beneficially own or control, directly or indirectly, Voting Shares in the capital of the Borrower which have or represent more than 30% of all the votes entitled to be cast by shareholders for an election of the board of directors of the Borrower;
- (b) other than in the case of an Excluded Replacement, individuals who were elected as members of the board of directors of the Borrower by the most recent resolutions of the shareholders of the Borrower shall no longer constitute a majority of the board of directors of the Borrower at any time prior to the next following resolutions of the shareholders of the Borrower relating to the election of the same;
- (c) other than in the case of an Excluded Replacement, individuals who were members of the board of directors of the Borrower immediately prior to resolutions of the shareholders of the Borrower relating to the election of directors shall not constitute a majority of the board of directors following such election;

**“Commercial Lender”** means each of the Persons having executed this Agreement as Commercial Lender and any other Person who becomes a Commercial Lender in accordance with this Agreement;

**“Commitment”** means, with respect to each Lender, its proportion (expressed as a percentage or as an amount, as the case may be) of the aggregate amount of the Term Facility, as specified opposite its name in Schedule "A", subject however to any readjustment resulting from a modification in the amount of the Term Facility;

**“Commodity Agreement”** has the meaning given to it in the Senior Credit Agreement;

**“Compliance Certificate”** means a certificate required to be delivered from time to time by the Borrower to the Secured Parties substantially in the form of Schedule "B" for the purpose of confirming compliance of the Borrower (and the other Credit Parties) with, *inter alia*, the financial, restrictive or other covenants under this Agreement;

**“Compliance Date”** has the meaning set forth in Section 9.1(v);

**“Control”** (including any correlative term) means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Person (whether through ownership of securities or partnership or trust interests, by contract or otherwise); without limiting the generality of the foregoing (i) a Person is deemed to Control a corporation if such Person (or such Person and its Affiliates) holds outstanding shares or other rights carrying more than 50% of the voting power in the election of the board of directors of the corporation; (ii) a Person is deemed to Control a partnership if such Person (or such Person and its Affiliates) holds more than 50% in value of the equity of the partnership; (iii) a Person is deemed to Control a trust if such Person (or such Person and its Affiliates) holds more than 50% in value of the beneficial interests in the trust; and (iv) a Person that controls another Person is deemed to Control any Person controlled by that other Person;

**“Corporate Structure Chart”** means, as applicable, such corporate structure information (including in the form of a perfection certificate) of the Borrower and its Subsidiaries, in form and substance acceptable to the Lenders, which is required to be delivered under this Agreement;

**“Covenants”** means the covenants reiterated and incorporated by reference in Section 8.1(b);

**“Credit Documents”** means this Agreement, the Security Documents, and any other present and future document relating to any of the foregoing;

**“Credit Party”** means the Borrower and any guarantor under this Agreement from time to time;

**“Currency Hedging Agreement”** has the meaning given to it in the Senior Credit Agreement;

**“Current Security Package”** means the current security package referred to in Section 7.2;

**“Debt”** means, with respect to any Person (“X”), without duplication:

- (a) indebtedness of X and its Subsidiaries for borrowed money;
- (b) obligations of X and its Subsidiaries arising pursuant or in relation to: (i) bankers' acceptances (including payment and reimbursement obligations in respect thereof), or (ii) letters of credit and letters of guarantee supporting obligations which would otherwise constitute Debt within the meaning of this definition or indemnities issued in connection therewith;
- (c) obligations of X and its Subsidiaries with respect to drawings under all other letters of credit and letters of guarantee;
- (d) obligations of X and its Subsidiaries under Guarantees, indemnities, assurances, legally binding comfort letters or other contingent obligations relating to the indebtedness or other obligations of any other Person which would otherwise constitute Debt within the meaning of this definition if such other Person was X and all Financial Assistance, including endorsements of bills of exchange (other than for collection or deposit in the ordinary course of business);
- (e) (i) all indebtedness of X and its Subsidiaries representing the deferred purchase price of any property to the extent that such indebtedness is or remains unpaid after the expiry of the customary time period for payment, provided however that such time period shall in no event exceed 90 days, and (ii) all obligations of X and its Subsidiaries created or arising under any: (A) conditional sales agreement or other title retention agreement which is not a lease, or (B) capital or financing lease;
- (f) all Attributable Debt in respect of all leases of X and its Subsidiaries other than in respect of (i) leases of office space or (ii) operating leases under GAAP (and, at the option of the Borrower, any present or future lease that would have been

characterized as an operating lease under GAAP as in effect on December 31, 2018), in each case entered into in the ordinary course of business (and for certainty, no Sale-Leaseback shall be considered to be entered into in the ordinary course of business);

- (g) Prepaid Obligations of X and its Subsidiaries;
- (h) all other long-term obligations (including the current portion thereof) upon which interest charges are customarily paid prior to default by X; and
- (i) all indebtedness of other Persons secured by a Security Interest on any asset of X and its Subsidiaries, whether or not such indebtedness is assumed thereby; provided that the amount of such indebtedness shall be the lesser of (i) the fair market value of such asset at such date of determination, and (ii) the amount of such indebtedness shall only be Debt to the extent recorded as a liability in accordance with GAAP,

but, for certainty, shall exclude current and future taxes and, provided that, unless otherwise expressly provided or the context otherwise requires, references herein to "Debt" shall be and shall be deemed to be references to Debt of the Borrower and its Subsidiaries;

**"Default"** means any event or circumstance, which constitutes an Event of Default or which, with the lapse of time, the giving of a notice, or both, would constitute an Event of Default;

**"Drawdown Outside Date"** the first anniversary date of the Effective Date;

**"Effective Date"** means the effective date referred to in Section 6.1;

**"Effective Date 13-Week Cash Flow"** has the meaning specified in Section 6.1(b)(i);

**"Effective Date Business Plan"** has the meaning specified in Section 6.1(b)(ii);

**"Energy Regulator"** means (a) with respect to Alberta, the Alberta Energy Regulator, (b) with respect to British Columbia, the BC Oil and Gas Commission, (c) with respect to Saskatchewan, the Saskatchewan Ministry of Energy and Resources, and (d) with respect to any other Material Jurisdiction, the regulatory body with responsibility for the oversight of environmental matters in the oil and gas industry in such jurisdiction; and in each case, together with any successor or replacement agency, department, ministry or commission thereto;

**"Environmental Laws"** means all Applicable Laws with respect to the environment or environmental or public health and safety matters contained in statutes, regulations, rules, ordinances, orders, judgments, approvals, notices, permits or policies, guidelines or directives having the force of law;

**"Equivalent Amount"** means, on any date, the equivalent amount in Canadian Dollars or United States Dollars, as the case may be, after giving effect to a conversion of a specified amount of US Dollars to Canadian Dollars or of Canadian Dollars to US Dollars, as the case may be, at the rate of exchange for Canadian interbank transactions established by the Bank of Canada and quoted at approximately the end of business (Toronto time) for the day in question or, if such determination is required to be made prior to such time, as quoted at approximately the

end of business (Toronto time) on the Business Day immediately preceding the date of determination, or, if such rate is for any reason unavailable, at the spot rate quoted for wholesale transactions by the Agent at approximately noon (Toronto time) on that date in accordance with its normal practice;

**"Event of Default"** means an event of default referred to in Section 9.1;

**"Excluded Replacement"** means, with respect to the Borrower, the replacement of those of its directors who have died or have been found to be of unsound mind by a court of competent jurisdiction;

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

- (a) advance or supply funds for the payment or purchase of any Debt of any other Person;
- (b) purchase, sell or lease (as lessee or lessor) any property, assets, goods, services, materials or supplies primarily for the purpose of enabling any Person to make payment of Debt or to assure the holder thereof against loss;
- (c) guarantee, indemnify, hold harmless or otherwise become liable to any creditor of any other Person from or against any losses, liabilities or damages in respect of Debt;
- (d) make a payment to another for goods, property or services regardless of the non-delivery or non-furnishing thereof to the Borrower or any Subsidiary (as applicable); or
- (e) make an advance, loan or other extension of credit to or to make any subscription for equity, equity or capital contribution, or investment in or to maintain the capital, working capital, solvency or general financial condition of another Person.

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

**"Financial Instrument"** means any Interest Hedging Agreement, Currency Hedging Agreement or Commodity Agreement;

**“Financial Instrument Demand for Payment”** has the meaning given to it in the Senior Credit Agreement;

**“Financial Instrument Obligations”** means obligations arising under Financial Instruments entered into by the Borrower or a Subsidiary thereof to the extent of the net amount due or accruing due by the Borrower or such Subsidiary thereunder

**“Fiscal Year”** means, with respect to the Borrower, its fiscal year ending on December 31 of each calendar year;

**“Fixed Rate Period”** has the meaning given to it in Section 3.4(a)(i);

**“GAAP”** means generally accepted accounting principles in Canada (including the International Financial Reporting Standards if and when applicable) which are in effect from time to time;

**“Guarantee”** means any obligation, contingent or not, directly or indirectly guaranteeing any liability or indebtedness of any Person or protecting a creditor of such Person from a loss in respect of any such liability or indebtedness or having the same economic effect;

**“Insolvency Proceeding”** means any proceeding seeking to adjudicate a Credit Party an insolvent, seeking a receiving order against a Credit Party under the *Bankruptcy and Insolvency Act* (Canada) the *Companies’ Creditors Arrangement Act* (Canada) or the *Winding-up and Restructuring Act* (Canada) (or any other bankruptcy, insolvency or similar law), or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief or composition of a Credit Party or its debts (including an arrangement or proceeding under the *Canada Business Corporations Act* or the *Business Corporations Act* (Alberta)) or a stay of proceedings of a Credit Party’s creditors generally (or any class of creditors) or any other relief, under any federal, provincial or foreign law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors (including the *Bankruptcy and Insolvency Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada) the *Winding-up and Restructuring Act* (Canada) and any similar legislation in any jurisdiction) or at common law or in equity;

**“Intercreditor Agreement”** means the intercreditor agreement dated October 30, 2020 made between, *inter alios*, the Senior Agent, the Agent and the Borrower;

**“Interest Hedging Agreement”** has the meaning given to it in the Senior Credit Agreement;

**“Lenders”** means collectively the Commercial Lenders and BDC;

**“Lien”** means any hypothec, security interest, mortgage, lien, adverse claim, deed of trust, right of preference, servitude, right of way, pledge, assignment by way of security or any other agreement or encumbrance of any nature that secures the performance of an obligation, and a Person is deemed to own subject to a Lien any property or assets that it has acquired or holds under any conditional sale agreement, a capital lease (or its equivalent), or similar agreement (other than an operating lease (or its equivalent)) relating to such property or assets, and in any event shall be deemed to include any “Security Interest” as defined in the Senior Credit Agreement;

**“LMR”** means, subject to Section 1.11, for any Material Jurisdiction, the environmental liability management rating (or equivalent) governing conventional upstream oil and gas wells, facilities, and pipelines for such jurisdiction, as determined in accordance with the rules and regulations of each applicable Material Jurisdiction and its Energy Regulator for the then relevant period, provided that any security deposits provided to the applicable Energy Regulator will not be considered as part of the deemed assets used in such calculation for purposes of this definition;

**“Majority Commercial Lenders”** means (a) at any time where there is one or two Commercial Lenders, such Commercial Lender(s), (b) at any time where there is more than two Commercial Lenders, any group of Commercial Lenders whose Commitments amount in the aggregate to more than 66⅔% of the aggregate amount of the Term Facility allocated to all the Commercial Lenders (excluding, for certainty, the Commitment of BDC);

**“Majority Lenders”** means the Majority Commercial Lenders and BDC;

**“Material Adverse Change”** means any change, condition, event or occurrence which, when considered individually or together with other changes, conditions, events or occurrences, could reasonably be expected to have a Material Adverse Effect;

**“Material Adverse Effect”** means a material adverse effect on:

- (a) the financial condition of the Borrower and its Subsidiaries on a consolidated basis and taken as a whole;
- (b) the ability of the Borrower and the Subsidiaries to observe or perform their respective Obligations under the Credit Documents to which any of them is a party or the validity or enforceability of such Credit Documents or any material provision thereof;
- (c) the property, business, operations, liabilities or capitalization of the Borrower and its Subsidiaries on a consolidated basis and taken as a whole; or
- (d) the Security, the priority thereof or any material right or remedy of the Agent or Lenders thereunder;

**“Material Jurisdiction”** means, any jurisdiction in Canada where the Borrower or any Subsidiary, in aggregate and at any time from time to time, own or operate assets, property and undertaking with aggregate associated undiscounted and uninflated abandonment and reclamation liabilities (expressed in nominal dollars) of the Borrower and such Subsidiary in such jurisdiction is in excess of 10% of the then current Borrowing Base. As of the date hereof the only Material Jurisdiction is the Province of Alberta;

**“Maturity Date”** means October 30, 2024, provided that if any such day falls on a day which is not a Business Day, then the applicable date will be the immediately following Business Day;

**“Multi-Year Business Plan”** means the Effective Date Business Plan as the same is updated from time to time as required pursuant to Section 8.3(b)(i);

**"Necessary Authorization"** means an authorization, order, permit, approval, grant, license, consent, right, franchise, privilege, certificate, judgment, writ, injunction, award, determination, direction, decree or demand or the like issued or granted by law or by rule or regulation of any governmental authority of any jurisdiction applicable to any Credit Party.

**"Obligations"** means, collectively and at any time and from time to time, all of the obligations, indebtedness and liabilities (present or future, absolute or contingent, matured or not) of the Borrower and its Subsidiaries to the Lenders or the Agent under, pursuant or relating to the Term Facility or the Credit Documents and whether the same are from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again and including all principal, interest, fees, legal and other costs, charges and expenses, and other amounts payable by the Borrower under this Agreement and the other Credit Documents;

**"OFAC"** means The Office of Foreign Assets Control (OFAC) of the U.S. Department of Treasury;

**"OSFI"** means the Office of the Superintendent of Financial Institutions (Canada);

**"Payment Date"** has the meaning given to it in Section 3.4(c)(i);

**"Permitted Disposition"** has the meaning given to it in the Senior Credit Agreement;

**"Permitted Liens"** means the Security and such other Liens permitted as of the Effective Date under the Senior Credit Agreement, as amended from time to time with the consent of the Lenders;

**"Permitted Payments"** has the meaning given to it in the Intercreditor Agreement;

**"Person"** means any natural person, corporation, company, partnership, joint venture, limited liability company, unincorporated organization, trust or any other entity;

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

**"PIK Period"** means the interest moratorium referred to in Section 3.4(c)(i);

**"Prepaid Obligations"** means "take or pay", forward sale, prepaid or similar liabilities of a Person whereby such Person is obligated to settle, at some future date, an obligation in respect of Petroleum Substances, whether by deliveries (accelerated or otherwise) of Petroleum Substances, the payment of money or otherwise however, including the transfer of any Petroleum Substances, whether in place or when produced, for a period of time until, or of an amount such that, the lender or purchaser will realize therefrom a specified amount of money (however determined, including by reference to interest rates or other factors which may not be fixed) or a specified amount of such products or any interest in property of the character commonly referred to as a "production payment" and all such obligations for which such Person is liable without having received and retained a payment therefor or having assumed such obligation;

**"Pro Rata Share"** means, in respect of each Lender from time to time, the percentage determined by dividing the Lender's Commitment under the Term Facility by the aggregate of all of the Lenders' Commitments under the Term Facility;

**"Related Party"** means any Person which is any one or more of the following:

- (a) an Affiliate of the Borrower or any Subsidiary thereof;
- (b) a unitholder, shareholder or partner of the Borrower or any Subsidiary which, together with all Affiliates of such Person, owns or controls, directly or indirectly, more than 10% of the units, shares, capital or other ownership interests (however designated) of the Borrower or any Subsidiary, or an Affiliate of any such unitholder, shareholder or partner;
- (c) an officer, director or trustee of any of the foregoing; and
- (d) a Person which does not deal at arm's length (within the meaning of the *Income Tax Act* (Canada)) with the Borrower and its Subsidiaries;

**"Restricted Payments"** means:

- (a) the declaration, payment or setting aside for payment of any dividend or other distribution on or in respect of any shares in the capital of the Borrower or any Subsidiary which is not a Wholly-Owned Subsidiary (including any return of capital);
- (b) the redemption, retraction, purchase, retirement or other acquisition, in whole or in part, of any shares in the capital of the Borrower or any Subsidiary which is not a Wholly-Owned Subsidiary or any securities, instruments or contractual rights capable of being converted into, exchanged or exercised for shares in the capital thereof, including options, warrants, conversion or exchange privileges and similar rights;
- (c) the making of any loan or advance or any other provision of credit or Financial Assistance by the Borrower or any Subsidiary to any Related Party other than to the Borrower or a Wholly-Owned Subsidiary;
- (d) the payment of any principal, interest, fees or other amounts on or in respect of any loans, advances or other Debt owing at any time by the Borrower or any Subsidiary to any Related Party, other than to the Borrower or a Subsidiary;
- (e) (i) the payment of any amount, (ii) the sale, transfer, lease or other disposition of any property or assets, or (iii) any granting or creation of any rights or interests, at any time, by the Borrower or any Subsidiary to or in favour of any Related Party, other than to or in favour of the Borrower or a Subsidiary; or
- (f) any bonus, fee or like payment to any shareholder, partner, director or officer of the Borrower or any Subsidiary or an Affiliate of the Borrower or any Subsidiary, excluding however for certainty (i) performance bonuses and like payments to employees made in the ordinary course of business and consistent with past

practice and (ii) fees paid to directors in accordance with the ordinary course of business and consistent with past practice,

and whether any of the foregoing is made, paid or satisfied with or for cash, property or any combination thereof;

**"Sale-Leaseback"** means an arrangement, transaction or series of arrangements or transactions under which title to any real property, tangible personal property or fixture is transferred by the Borrower or a Subsidiary thereof (a "transferor") to another Person which leases or otherwise grants the right to use such property to the transferor (or nominee of the transferor) and, whether or not in connection therewith, the transferor also acquires a right or is subject to an obligation to acquire such property or a material portion thereof, and regardless of the accounting treatment of such arrangement, transaction or series of arrangements or transactions;

**"Sanctions"** means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by:

- (a) (i) the U.S. government, including those administered by OFAC or (ii) the U.S. State Department, the U.S. Department of Commerce, the U.S. Department of the Treasury or any other United States governmental authority;
- (b) the Canadian Department of Global Affairs Canada, Innovation, Science and Economic Development Canada, OSFI or any other applicable Canadian governmental authority; and
- (c) the United Nations Security Council;

**"Sanctions List"** means any of the lists of specifically designated nationals or designated Persons (or equivalent) held by the U.S. government, including those administered by OFAC, the U.S. State Department, the U.S. Department of Commerce or the U.S. Department of the Treasury, or the United Nations Security Council or any similar list maintained by any other Canadian or United States governmental authority, in each case as the same may be amended, supplemented or substituted from time to time;

**"Secured Parties"** means, collectively, the Agent and the Lenders; and "Secured Party" means any one of them;

**"Security"** means the Liens, security and subordinations granted and the undertakings and acknowledgments provided to or for the benefit of the Secured Parties pursuant to Section 7.2;

**"Security Documents"** means any document or agreement evidencing or relating to the Security including any subordination and intercreditor agreement and consent and waiver agreement contemplated herein;

**"Security Package"** has the meaning set forth in Section 7.2;

**"Senior Agent"** means ATB Financial in its capacity as administrative agent of the Senior Lenders, or any successor administrative agent of the Senior Lenders appointed pursuant to the Senior Credit Agreement;

**“Senior Compliance Certificate”** means such certificate required to be delivered from time to time by the Borrower to the Senior Agent in accordance with the Senior Credit Agreement for the purpose of confirming compliance of the Borrower (and the other Credit Parties) with, *inter alia*, the financial or other covenants under the Senior Credit Agreement as well as accuracy of representations and warranties and absence of default thereunder;

**“Senior Credit Agreement”** means the amended and restated credit agreement made as of July 14, 2020, among the Borrower, as borrower, ATB Financial, as agent, and ATB Financial and National Bank of Canada, as lenders, as amended by a first amending agreement dated October 30, 2020;

**“Senior Debt”** has the meaning given to it in the Intercreditor Agreement;

**“Senior Credit Documents”** means, collectively, the Senior Credit Agreement, the other “Documents” under and as defined in the Senior Credit Agreement and all other agreements, instruments or other documents which create, evidence, establish or relate to the Senior Credit Obligations;

**“Senior Credit Obligations”** means, collectively, all of the present and future obligations, liabilities and indebtedness of the Borrower and its Subsidiaries to the Senior Agent and the Senior Lenders under, pursuant or relating to the Senior Credit Agreement and the other Senior Credit Documents, including all loans thereunder and interest payable thereon;

**“Senior Interest Rate”** means, at any time, the applicable aggregate interest rate payable by the Borrower under the Senior Credit Agreement on Senior Prime Rate Loans advanced under the Borrowing Base Facilities, which is based on the CAD Prime Rate plus the then-applicable margin or pricing rate (or equivalent) above the CAD Prime Rate under the Senior Credit Agreement; provided that if the loans under the Senior Credit Agreement are repaid in full and the Senior Credit Agreement is terminated, or if for any other reason, the Senior Interest Rate as hereinbefore defined is not available to the Agent, the Senior Interest Rate for the purposes of this Agreement will be the last available Senior Interest Rate based on the foregoing definition;

**“Senior Lenders”** means, collectively, each Person that is or becomes a lender under the Senior Credit Agreement from time to time, being initially ATB Financial and National Bank of Canada;

**“Senior Prime Rate Loans”** means loans denominated in Dollars made under the Borrowing Base Facilities pursuant to the Senior Credit Agreement in respect of which the Borrower has the option of electing that they bear interest with reference to the CAD Prime Rate;

**“Subsidiary”** means a Person that is under the Control of another Person;

**“Tax Evasion”** means such tax evasion referred to in Section 8.2(g)(vi);

**“Term Facility”** means the facility referred to in Section 2.1;

**“Threshold Amount”** means, at any time, 2.5% of the then applicable Borrowing Base;

**“Total Commitment”** has the meaning given to it in the Senior Credit Agreement as of the date hereof;

**“Transfer”** means the transfer referred to in Section 13.3(a);

**“US Dollar”** or the symbol **“US\$”** means lawful money of the United States of America;

**“Voting Share”** means capital stock of any class of any corporation which carries voting rights to elect the board of directors thereof under any circumstances, provided that, for purposes hereof, shares which carry the right to so vote conditionally upon the happening of an event shall not be considered Voting Shares until the occurrence of such event; and

**“Wholly-Owned Subsidiary”** means, with respect to any Person (“X”):

- (a) a corporation, all of the issued and outstanding shares in the capital of which are beneficially held by:
  - (i) X;
  - (ii) X and one or more corporations, where all of the issued and outstanding shares in the capital of such corporations are held by X; or
  - (iii) two or more corporations, where all of the issued and outstanding shares in the capital of such corporations are held by X;
- (b) a corporation which is a Wholly-Owned Subsidiary of a corporation that is a Wholly-Owned Subsidiary of X;
- (c) a partnership, all of the partners of which are X and/or Wholly-Owned Subsidiaries of X; or
- (d) any person of which all of the income, capital, beneficial and ownership interests (however designated) are beneficially owned and controlled by the X and/or Wholly-Owned Subsidiaries of X,

provided that unless otherwise expressly provided or the context otherwise requires, references herein to “Wholly-Owned Subsidiary” or “Wholly-Owned Subsidiaries” shall be and shall be deemed to be references to Wholly-Owned Subsidiaries of the Borrower.

## **1.2 Extended Meanings**

In this Agreement words importing the singular number only include the plural and vice versa. The term “including” means “including without limiting the generality of the foregoing”. Subject to Section 1.3, all definitions of or references to any agreement or document in this Agreement will be construed as referring to such agreement or document, as it may be amended, supplemented, restated or replaced from time to time. Any reference in this Agreement to any Person will be construed to include such Person's successors and permitted assigns. Any reference to any law or regulation in this Agreement will be construed to refer to such law or regulation as amended or supplemented from time to time.

### **1.3 References to the Senior Credit Agreement**

In the event of any amendment to or waiver of any provision of the Senior Credit Agreement which is incorporated in or made applicable to this Agreement by reference (including the reference to the Liens and indebtedness permitted under the Senior Credit Agreement), such amendment or waiver will also apply to such provision as incorporated in or applicable to this Agreement to the extent the Lenders have consented in writing to such applicable amendments. Upon receipt of such written consent by the Lenders, no further action or no further document will be required to give effect to such amendment under this Agreement. If the Senior Credit Agreement terminates, any reference thereto in this Agreement will then remain in effect notwithstanding the termination.

### **1.4 Accounting Terms and Calculations**

Unless otherwise provided, (i) terms and expressions of an accounting or financial nature have the respective meanings given to such terms and expressions under GAAP, (ii) calculations must be made in accordance with GAAP insofar as applicable, and (iii) financial ratios must be calculated in accordance with the requirements of the Senior Credit Agreement (as same are calculated as of the date of this Agreement unless otherwise agreed to by the Lenders). In the event of a change in GAAP having a material effect on the application of certain provisions of this Agreement, the Borrower and the Lenders, further to a request from any party, will use reasonable efforts to negotiate amendments to these provisions in order to facilitate their application and preserve the original intent of the affected provisions. If the Borrower and the Agent on behalf of the Lenders do not (for any reason whatsoever) mutually agree (in their respective sole discretion, without any obligation to so agree) on such amendment or amendments to this Agreement within 60 days following the date of delivery of such request, the Borrower shall continue to provide financial statements in accordance with GAAP in effect prior to such request and, for all purposes hereof, the applicable changes from GAAP in effect prior to such request or in accounting policy (as the case may be) shall be disregarded hereunder and any amount required to be determined hereunder shall, nevertheless, continue to be determined under GAAP and the Borrower's accounting policy in effect prior to the date of such request.

### **1.5 Currency Conversions**

Where any amount expressed in any currency has to be converted or expressed in another currency, or where its equivalent in another currency has to be determined (or vice versa), the calculation is made at the exchange rate announced or quoted by the Bank of Canada in accordance with its normal practices at or around 4:30 p.m. (Eastern time) on the previous Business Day for the relevant currency against the other currency (or vice versa). If the Bank of Canada does not announce such a rate, then the Agent will use the spot rate available from the Bloomberg or Reuters service, or if such rate is not available, a rate that the Agent determines to be reasonable and is otherwise acceptable to the Borrower, acting reasonably.

### **1.6 Time**

Except where otherwise indicated in this Agreement, any reference to time means local time in Calgary.

## **1.7 Headings and Table of Contents**

The headings and the Table of Contents are inserted for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Section, paragraph or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Sections, Paragraphs and Schedules are to Sections, Paragraphs of and Schedules to this Agreement.

## **1.8 Calculation of Time**

If any period of time is to expire hereunder on any day that is not a Business Day, the period will be deemed to expire on the next succeeding Business Day. If any report or other performance is required to be delivered or performed on any day that is not a Business Day, the delivery or performance will be due on the next succeeding Business Day.

## **1.9 Governing Law**

This Agreement is governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein.

## **1.10 Inconsistency**

In the event of inconsistency between this Agreement and any other Credit Document, the provisions of this Agreement will be accorded precedence.

## **1.11 Changes to LMR**

If (a) as a result of any change in any Applicable Law, rule, policy, regulation, order or directive, any applicable Energy Regulator ceases to use a liability management (or equivalent) rating as a means of determining whether a corporation is in compliance with such regulator's abandonment and reclamation policies, regulations and directives in any one or more Material Jurisdiction, (b) the method of calculation of any LMR changes in any material manner in any Material Jurisdiction, or (c) if the threshold for which (i) license transfers of regulated properties shall be permitted under an Energy Regulator's licensee liability regime in any Material Jurisdiction changes in any material respect or (ii) any security deposits will be required to be provided to the applicable Energy Regulator changes in any material respect, then, in any such case, the Borrower, the Agent and BDC shall enter into good faith discussions with a view to determining a comparable rating system or threshold, as applicable, to replace the concept of LMR as set forth herein that is, at such time, broadly accepted as the prevailing market practice for such regulation in the applicable Material Jurisdiction, with the intent of having the respective positions of the Lenders and the Borrower after such change conform as nearly as possible to their respective positions immediately prior to such change; provided that, until any such agreement is reached, the LMR shall continue to be calculated by the Borrower in consultation with the Agent and BDC, acting reasonably, as if no such change had occurred and such calculations and thresholds are reasonably capable of being calculated notwithstanding such change. Upon the Borrower, the Agent and BDC agreeing on such methodology for determining LMR and the thresholds set forth herein, the Borrower and the Lenders party hereto shall enter into documentation to amend the provisions hereof to refer to such rate and make all other adjustments incidental thereto. The parties hereto agree that such amendment shall require the

consent of the Majority Lenders, such consent not to be unreasonably withheld notwithstanding anything to the contrary set out herein.

## **ARTICLE 2 THE TERM FACILITY**

### **2.1 The Term Facility**

The Lenders severally (and not jointly or jointly and severally) agree to make available to the Borrower a non-revolving term facility ("**Term Facility**") in a principal amount not to exceed their respective Commitment set out in Schedule "A" hereto. As at the date of this Agreement, the collective Commitments of the Lenders with respect to the Term Facility aggregate to \$25,000,000.

### **2.2 Purpose of the Term Facility**

The Borrower will only use the Term Facility to fund the cash flow needs of operations of the Credit Parties primarily based or located in Canada (including (A) repayments of outstanding loans under an overdraft or operating facility (including the Borrowing Base Facilities) of the Credit Parties (so long as the applicable Lender's or other financial institution's commitment or authorized amount thereunder is not reduced (other than to the extent of temporary advances or borrowing excesses)); and (B) normally scheduled principal and interest payments on any of the Credit Parties' existing indebtedness as well as ordinary course of business lease, equipment or supplier financing payments).

Notwithstanding the foregoing, and for further certainty, the proceeds from the Term Facility will not be used (a) for repayment of outstanding loans on the maturity date thereof; (b) to fund cash sweep payments under outstanding loans and similar types of payments; (c) to fund Restricted Payments (other than Restricted Payments to another Credit Party); or (d) for repayment of amounts due under the Senior Credit Agreement as a result of any Borrowing Base Shortfall, any reduction in the Total Commitment or any other reduction of or restriction to the availability of credit thereunder.

### **2.3 Availability**

- (a) The Term Facility will be available through Borrowings and will not revolve such that the Borrower may not re-borrow any Borrowing previously repaid, any such repayment automatically reducing the Term Facility by an amount equal to the amount repaid.
- (b) The Term Facility must be drawn by the Borrower:
  - (i) in a maximum of up to four Borrowings;
  - (ii) during the period of time between the Effective Date and the Drawdown Outside Date (inclusively); and
  - (iii) in a manner which ensures that no further Borrowings may be drawn and disbursed during the 3-month period following the immediately preceding drawdown under the Term Facility.

- (c) Upon the earliest of:
- (i) the Drawdown Outside Date; or
  - (ii) the disbursement date of the fourth Borrowing under the Term Facility,
- any unused portion of the Term Facility will cease to be available and the Commitment of each Lender related thereto, will be automatically and permanently terminated and cancelled.

## **2.4 Notice of Borrowings**

To obtain a Borrowing under the Term Facility, the Borrower must give a notice to the Agent specifying:

- (a) the amount of the Borrowing, which must be a multiple of \$100,000, but with a minimum of \$2,500,000 per Borrowing; and
- (b) the date of the Borrowing, which must be a Business Day.

For each Borrowing under the Term Facility, the Borrower must also comply with Section 6.2.

The notice must be given no later than 10:00 a.m. five Business Days preceding the date of the Borrowing. Each notice must be in writing in the form of Schedule "C" or in any other form as may be agreed from time to time between the Agent and the Borrower. The Agent will provide promptly to the Lenders a copy of each such notice (no later than the day set forth in Section 2.6(c)).

## **2.5 Irrevocability of Notices of Borrowing/Prepayment**

The Borrower may not cancel a notice of Borrowing or prepayment, unless applicable breakage costs are paid, as contemplated by Section 13.7.

## **2.6 Funding**

- (a) Subject to Section 2.6(c), at the request of the Agent, each Lender will promptly pay to the Agent such Lender's Pro Rata Share of any Borrowing made or to be made by the Agent on behalf of the Lenders. The Agent will provide the Lenders with such information as may be necessary in order for the Lenders to make payments to the Agent and fund their respective Pro Rata Shares of any Borrowing (subject to rounding adjustments by the Agent).
- (b) Any amount to be paid by a Lender to the Agent must be made available to the Agent (to such account of the Agent as notified in writing to each Lender) by 11:00 a.m. on the applicable day. Any amount to be disbursed by the Agent to the Borrower will be made available to the Borrower by crediting the account of the Borrower at the Branch of Account or at any other place to be agreed upon from time to time between such Borrower and the Agent.

- (c) The Agent will not be required to fund a requested Borrowing to the Borrower until the Agent has received from each Lender its Pro Rata Share of such Borrowing. Notwithstanding the foregoing, the Agent may not request the Lenders to fund their respective Pro Rata Shares of any Borrowing pursuant to Section 2.6(a), before having confirmed with each Lender at least two Business Days prior to the requested date of advance of a Borrowing pursuant to Section 2.6(a)) that the conditions precedent set forth at Section 6.2 have been completed to such Lender's satisfaction.
- (d) Upon receipt of a confirmation from each Lender that the conditions precedent to a proposed Borrowing have been satisfied, then unless the Agent has received notice from a Lender prior to the proposed date of advance of such Borrowing that such Lender will not make available to the Agent such Lender's Pro Rata share of such Borrowing, the Agent may assume that such Lender has made such share available on such date in accordance with the provisions of this Agreement concerning funding by Lenders and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event if a Lender has not in fact made its share of the applicable advance available to the Agent, then the applicable Lender will pay to the Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Agent, at a rate determined by the Agent in accordance with prevailing banking industry practice on interbank compensation. If such Lender pays such amount to the Agent, then such amount will constitute such Lender's Borrowing included in such advance. If the Lender does not do so forthwith, the Borrower will pay to the 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 will be without prejudice to any claim the Borrower may have against a Lender that has failed to make such payment to the Agent.

## **2.7 Limitations on each Lender's Obligation to Fund**

Each Lender's obligation to fund Borrowings under Term Facility is limited to such Lender's Commitment and each Borrowing will be advanced to the Agent concurrently by each Lender rateably in accordance with its Pro Rata Share. The obligations of the Lenders hereunder are not joint or joint and several (solidary), and no Lender is responsible for the obligations of any other Lender.

## **2.8 Account of Record**

The Agent will open and maintain books of account evidencing all Borrowings and all other amounts owing by the Borrower to the Lenders hereunder. The Agent will enter in the foregoing accounts details of all amounts from time to time owing, paid or repaid by the Borrower hereunder. The information entered in the foregoing accounts will constitute *prima facie* evidence of the obligations of the Borrower to the Lenders hereunder with respect to all Borrowings and all other Obligations. After a request by the Borrower, the Agent will promptly advise the Borrower of such entries made in the Agent's books of account.

## ARTICLE 3 FEES AND INTEREST

### 3.1 Upfront Fee

The Borrowers must pay to the Agent an upfront fee specified in a separate agreement executed prior to this Agreement and to be distributed in accordance with such agreement.

### 3.2 Annual Fee in respect of Term Facility

The Borrower will pay to the Agent, for the rateable benefit of the Lenders, on each anniversary date of the Effective Date, an annual fee equal to (i) [fee redacted]% of the of the aggregate amount of the Commitments on the first anniversary date; (ii) [fee redacted]% of the of the aggregate amount of the Commitments on the second anniversary date; and (iii) [fee redacted]% of the aggregate amount of the Commitments on the third anniversary date. For certainty, the annual fee will be payable by the Borrower based on the aggregate amount of the Commitments made available on the Effective Date notwithstanding the termination and cancellation of the unused portion of the Term Facility pursuant to Section 2.3 and any prepayment of the Borrowings under Section 4.2.

### 3.3 Standby Fee

The Borrower will pay to the Agent for the rateable benefit of the Lenders, a standby fee on the unused portion of the aggregate amount of the Commitments. The standby fee will be calculated daily from the date of this Agreement at an annual rate equal to [fee redacted]% *per annum* on the basis of a 365 day year. The standby fee will be payable quarterly to the Agent in arrears on the first Business Day of each Fiscal Quarter.

### 3.4 Interest on Borrowings

- (a) Borrowings will bear interest from the date of advance to the date of repayment in full, both before and after default, maturity and judgement, as follows:
  - (i) for the period between the Effective Date and the first anniversary date of the Effective Date (inclusively) (the “**Fixed Rate Period**”), at a *per annum* rate equal to [rate redacted]%;
  - (ii) thereafter until the second anniversary date of the Effective Date (inclusively), at a *per annum* rate equal to the greater of (A) the Senior Interest Rate plus [rate redacted]%; and (B) [rate redacted]%;
  - (iii) thereafter until the third anniversary date of the Effective Date (inclusively), at a *per annum* rate equal to the greater of: (A) the Senior Interest Rate plus [rate redacted]%; and (B) [rate redacted]%; and
  - (iv) thereafter, at a *per annum* rate equal to the greater of: (A) the Senior Interest Rate plus [rate redacted]%; and (B) [rate redacted]%.
- (b) Each determination by the Agent of the Senior Interest Rate and the rate of interest applicable to the Borrowings from time to time will, in the absence of manifest error, be binding upon the Borrower. Changes in the Senior Interest

Rate will cause an immediate adjustment of the interest rate applicable to the Borrowings without the necessity of any notice to the Borrower.

- (c) Such interest is payable to the Agent for the rateable benefit of the Lenders as follows:
  - (i) during the Fixed Rate Period, interest on any Borrowing will accrue and be added to the principal amount of such Borrowing (capitalized) on the last Business Day of each calendar month (each, a “**Payment Date**”) (the “**PIK Period**”); and
  - (ii) after the PIK Period, interest on any Borrowing (including on all interest capitalized during the PIK Period) will accrue and be payable monthly in arrears on each applicable Payment Date.
- (d) For certainty, the interest accrued and added to the principal amount of any Borrowings during the PIK Period will bear interest at the same rate as the principal amount of the Borrowings from time to time and will be due and payable by the Borrower on the Maturity Date.
- (e) The Agent will provide to the Lenders or the Borrower, from time to time, upon request, advice as to the Senior Interest Rate at such time.

### **3.5 Calculation of Interest Rates**

- (a) Interest rates and fees are annual rates and will be calculated on the principal amount of the Borrowings (including capitalized interest) outstanding from time to time and on the basis of the actual number of days elapsed in a year of 365 days or 366 days, as the case may be.
- (b) Interest will be calculated using the nominal rate method of calculation, and will not be calculated using the effective rate method of calculation or on any other basis that gives effect to the principle of deemed re-investment of interest.
- (c) For the purposes of the *Interest Act* (Canada) only, the annual rate of interest equivalent to a rate otherwise calculated under this Agreement is equal to the rate so calculated multiplied by the actual number of days included in a given year and divided by 365 (366) days.
- (d) Notwithstanding anything herein to the contrary, in no event will any interest rate or rates referred to herein (together with other fees payable hereunder which are construed by a court of competent jurisdiction to be interest or in the nature of interest) exceed the maximum interest rate permitted by Applicable Law. If such maximum interest rate would be exceeded by the terms hereof, the rates of interest payable hereunder will be reduced to the extent necessary so that such rates (together with other fees which are construed by a court of competent jurisdiction to be interest or in the nature of interest) equal the maximum interest rate permitted by Applicable Law, and any overpayment of interest received by the Agent or the Lenders theretofore will be applied, forthwith after determination of such overpayment, to pay all then outstanding interest, and thereafter to pay

outstanding principal, as if the same were a prepayment of principal and treated accordingly hereunder.

### **3.6 Interest on Arrears or Event of Default**

- (a) Any amount (whether principal, interest, costs or otherwise) which is not paid when due (including, for certainty, any payment due which is being blocked from being made to the Lenders pursuant to terms agreed upon between the Lenders and other creditors of the Borrower, including the Senior Lenders) will bear interest at the interest rate in effect from time to time for Borrowings (pursuant to Section 3.4) plus [rate redacted]% *per annum*. Interest on arrears will be compounded monthly and will be payable on demand.
- (b) Without duplication with Section 3.6(a), at the election of the Lenders while any Event of Default exists (or automatically while any Event of Default under Sections 9.1(f), 9.1(g) or 9.1(h) exists), the Borrower will, subject to the Applicable Law, pay interest (after as well as before maturity and judgement) on the Borrowings from and after the date of occurrence of such Event of Default for so long as it is existing, at the interest rate in effect from time to time for Borrowings (pursuant to Section 3.4) plus [rate redacted]% *per annum*. All such interest will be payable on demand by the Agent.

## **ARTICLE 4 REPAYMENT AND PREPAYMENT**

### **4.1 Mandatory Repayments of the Term Facility**

The Borrower must repay in full the outstanding Borrowings and pay all other amounts owing under Term Facility on the Maturity Date.

### **4.2 Prepayments**

The Borrower may make, from time to time, prepayments on outstanding Borrowings under the Term Facility without penalty, subject to the following terms and conditions:

- (a) the Borrower provides at least three (3) Business Days' prior written notice to the Agent setting out the principal amount it wishes to prepay and the proposed date of repayment;
- (b) the Borrower pays, in addition to such principal amount, all accrued and unpaid interest on the amount to be prepaid; and
- (c) if such prepayment on outstanding Borrowings is made within the period between the Effective Date and the 18 month anniversary of the Effective Date (inclusively), the Borrower concurrently pays a prepayment fee equal to [rate redacted] on the prepaid principal at such interest rate(s) pursuant to Section 3.4(a) which would have been applicable to the prepaid principal during the [interest period redacted] period following the prepayment date; for certainty, the foregoing prepayment fee will be payable prior to as well as following the occurrence of any Default or Event of Default, including in connection with the exercise by the Lenders of their rights and recourses hereunder. For the purpose of calculating any variable interest rate applicable to such [interest period

redacted] period pursuant to Section 3.4(a), the Agent will use the applicable interest rate as of the date of the prepayment and assume such interest rate applies for the duration of the [interest period redacted] period.

Any amount prepaid will permanently reduce the amount of the Term Facility.

## **ARTICLE 5 PLACE AND CURRENCY OF PAYMENT**

### **5.1 Payments to the Agent**

- (a) All payments to be made by the Borrower must be made to the Agent at the Branch of Account without deduction, counterclaim or set-off of any nature or kind.
- (b) All payments made to the Agent will be deemed to have been made to the Agent for the rateable benefit of the applicable Lenders.
- (c) Any payment due by the Borrower may be charged to or debited from any account maintained by Borrower with the Agent.

### **5.2 Time of Payments**

Any payment that is due on a day that is not a Business Day may be made on the next Business Day but will bear interest until received in full. All payments must be made in funds, which are immediately available on the date on which payment is due.

### **5.3 Currency**

Unless otherwise provided, (i) all amounts owing under any Borrowing are payable in the currency of such Borrowing; and (ii) all other amounts are payable in Dollars.

### **5.4 Judgment Currency**

If a judgment is rendered against the Borrower for an amount owed hereunder and if the judgment is rendered in a currency ("**other currency**") other than that in which such amount is owed under this Agreement ("**currency of the Agreement**"), the Borrower will pay, if applicable, at the date of payment of the judgment, an additional amount equal to the excess (i) of the said amount owed under this Agreement, expressed into the other currency as at the date of payment of the judgment, over (ii) the amount of the judgment. For the purposes of obtaining the judgment and making the calculation referred to in (i), the exchange rate will be the spot rate at which the Agent, on the relevant date, may in Toronto or Montréal, sell the currency of the Agreement to obtain the other currency. Any additional amount owed under this Section will constitute a cause of action distinct from the cause of action which gave rise to the judgment, and said judgment will not constitute *res judicata* in that respect. The Borrower hereby indemnifies and agrees to save the Lenders harmless from and against any loss or damage arising as a result of such deficiency.

### **5.5 Payments Net of Taxes**

If the Borrower or a Secured Party is compelled by law to make any withholding or deduction due to any tax (excluding any tax on the overall net income or capital of a Lender) or

if a Lender is liable to pay tax in respect of any payment due or made by the Borrower, the Borrower will pay to the applicable Secured Party such additional amount as may be necessary in order that the payment actually received is, on a net after tax basis, equal to the payment that would otherwise have been received in the absence of such withholding or deduction or tax (including in the absence of any additional withholding or deduction or tax in respect of any additional amount payable pursuant to this Section and including taking into account taxes payable by such Lender on such additional amount).

## ARTICLE 6 CONDITIONS PRECEDENT TO BORROWINGS

### 6.1 Conditions Precedent to this Agreement

This Agreement will become effective (the “**Effective Date**”) on the date on which the Lenders confirm to the Borrower that they are satisfied that the following conditions have been fulfilled:

- (a) completion of final financial, legal and operational due diligence with respect to the Credit Parties;
- (b) the Lenders will have received, in form, detail and substance satisfactory to them, each of the following documents, cash flows and plans:
  - (i) a 13-week cash flow projection commencing with the week in which the Effective Date occurs (“**Effective Date 13-Week Cash Flow**”);
  - (ii) a consolidated business plan and financial projections commencing with the 2020 Fiscal Year and for each following Fiscal Year until the Maturity Date, including (A) forecasted consolidated balance sheets and forecasted consolidated statements of income and cash flows of the Borrower for each Fiscal Year (broken down by months/quarters for the current Fiscal Year), prepared in reasonable detail setting forth, with appropriate discussion, the principal assumptions on which such business plan is based, (B) *pro forma* calculations of the financial covenants and (C) a capital expenditure plan (“**Effective Date Business Plan**”);
  - (iii) a certified copy of the constitutive documents of the Credit Parties;
  - (iv) a certificate of good standing in respect of the Credit Parties;
  - (v) a certified copy of the documents evidencing the authority and attesting to the authenticity of the signatures of the Persons acting on behalf of the Credit Parties;
  - (vi) a certificate of an officer of the Borrower confirming that, as of the Effective Date:
    - (A) no event, circumstance or development shall have occurred or become known which has had or would reasonably be expected to have a Material Adverse Effect;
    - (B) no Default or Event of Default has occurred and is continuing; and

- (C) each of the representations and warranties set forth in Sections 8.1 and 8.2 (including, for certainty, the representations and warranties set forth in the Senior Credit Agreement and incorporated herein by reference) are true and correct in all respects;
- (vii) the Security Documents required to be delivered pursuant to Section 7.2;
- (viii) the Intercreditor Agreement;
- (ix) a certificate evidencing the insurance coverage required to be maintained by the Credit Parties pursuant to this Agreement naming the Agent as loss payee and additional insured;
- (x) a *pro forma* Compliance Certificate (calculated by including all indebtedness as of the date of Borrowing, including the initial Borrowing) showing compliance as of September 30, 2020;
- (xi) evidence satisfactory to the Lenders that (A) the facilities made available pursuant to the Senior Credit Agreement have been extended until at least May 31, 2021, (B) (1) revolving credit in an aggregate principal amount of not less than \$32,500,000 will be available to the Borrower under the Borrowing Base Facilities and (2) revolving and non-revolving credit in an aggregate principal amount of not less than \$65,000,000 will be available to the Borrower under the Senior Credit Agreement, in each case on terms reasonably satisfactory to Lenders until at least May 31, 2021 and (C) no Default or Event of Default (as such terms are defined in the Senior Credit Agreement) has occurred and is continuing (or would occur as a result of this Agreement becoming effective on the Effective Date); and
- (xii) legal opinions addressed to the Lenders from external counsel to the Credit Parties, relating to the existence and capacity of each Credit Party, the due authorization, execution and delivery, submission to jurisdiction and choice of law (if applicable) and the validity and enforceability of the Credit Documents to which each Credit Party is a party and such other matters as the Lenders may reasonably require;
- (c) the Security (or notice thereof) has been filed, registered, or recorded in all governmental offices where such filing, registration or recording is deemed necessary or desirable by the Lenders to perfect or protect the Liens created thereby and the priority thereof;
- (d) all documentation and other information required by the Lenders to satisfy their respective "Know Your Client" obligations will have been provided; and
- (e) all fees and expenses owing by the Borrower to the Lenders at the time of execution of this Agreement and all fees and expenses of the Lenders' counsel up to such time in connection with the Credit Documents will have been paid in full.

## **6.2 Conditions Precedent to All Borrowings**

The obligation of the Lenders to make any Borrowing under the Term Facility on any disbursement date will be subject to the prior satisfaction by the Borrower of each of the following conditions precedent, to the satisfaction of the Lenders:

- (a) The Borrower will have delivered to the Agent a timely notice of such Borrowing in accordance with Section 2.4;
- (b) The requirements set out in Section 2.3(b) have been satisfied, namely:
  - (i) The Borrower has not requested more than four Borrowings (including the requested Borrowing);
  - (ii) The proposed date of the requested Borrowing is before the Drawdown Outside Date; and
  - (iii) The date of the last Borrowing advanced to the Borrower was at least three months prior to the date for the requested Borrowing.
- (c) At least five Business Days prior to the date of the requested Borrowing, the Agent will have received, in form and substance satisfactory to the Lenders, a certificate, setting forth or attaching the following:
  - (i) an updated 13-Week Cash Flow showing the liquidity requirements for the next 13-week period following the disbursement date and confirming that such liquidity (in addition to the proceeds from the Borrowing) will be sufficient to meet the liquidity requirements of the Borrower for such period;
  - (ii) an update of the Multi-Year Business Plan as of the end of the most recently ended fiscal quarter of the Borrower;
  - (iii) that all taxes, assessments and governmental charges or levies imposed on it or on its income or assets have been paid when due (except for any such taxes, assessments, charges or levies that are being diligently disputed by the Borrower in good faith and for which appropriate reserves have been taken in accordance with GAAP);
  - (iv) no Default or Event of Default (including no Material Adverse Change) has occurred and is continuing or will occur as a result of such Borrowing; and
  - (v) no "Default" or "Event of Default" (as described in the Senior Credit Agreement) has occurred and is continuing or will occur as a result of such Borrowing;
- (d) the Lenders will be satisfied that (a) there exists no Default or Event of Default and that no Default or Event of Default will occur as a result of such Borrowing and (b) there exists no "Default" or "Event of Default" (as defined in the Senior

Credit Agreement) and that no such "Default" or "Event of Default" will occur as a result of such Borrowing;

- (e) each of the representations and warranties set forth in Sections 8.1 and 8.2 (including, for certainty, the representations and warranties set forth in the Senior Credit Agreement and incorporated herein by reference) are true and correct in all respects as of the date of the requested Borrowing; and
- (f) the Lenders will be satisfied that there has been no Material Adverse Change since the Effective Date or the previous disbursement date, as applicable.

### **6.3 Waiver of Conditions Precedent**

The conditions precedent provided for in this Section are for the sole benefit of the Lenders. The Lenders may waive such conditions precedent, in whole or in part, with or without conditions, without prejudice to any other or future rights that they might have against the Borrower and any other Person.

## **ARTICLE 7 SECURITY**

### **7.1 Guarantees**

Each Person that had provided a Guarantee under the Senior Credit Agreement in favour of the Senior Lenders as of the Effective Date will also provide a Guarantee in favour of the Agent (for the benefit of the Secured Parties) with respect to the Obligations.

### **7.2 Security over Assets**

To secure the performance of the Obligations, each Credit Party will provide in favour of the Agent (for the benefit of the Secured Parties) security over (i) the same collateral which otherwise secures such Credit Party's obligations under or in connection with the Senior Credit Agreement from time to time (the security as of the Effective Date, the "**Current Security Package**"); and (ii) in the event the Current Security Package does not provide for security over all of the personal (movable) assets, tangible and intangible, present and future of the Credit Parties, or if there is no Current Security Package, all of its personal (movable) assets, tangible and intangible, present and future (the security described in paragraphs (i) and (ii), collectively, the "**Security Package**"). Such Security Package must be valid and perfected under the laws of the Province of Alberta and each other jurisdiction in which the Credit Parties have personal property or real property from time to time (and the Borrower will, at its own expense, ensure that it is so valid and perfected), it being understood that such security will rank immediately after the security granted under or in connection with the Senior Credit Agreement.

### **7.3 Insurance**

The Borrower will cause the Agent to be named as loss payee and additional insured, as applicable, on all insurance policies relating to the assets covered by the Security (including credit insurance policies). Each policy covering tangible assets must contain a "mortgage clause" and each casualty and liability policy must also provide that the insurer will give the Agent at least 30 days' prior written notice of intended cancellation or non-renewal. The Borrower will furnish the Lenders with evidence satisfactory that the required insurance coverage is in effect.

#### **7.4 Future Credit Parties and Security**

The Borrower covenants that:

- (a) any Person who becomes a guarantor under the Senior Credit Agreement after the Effective Date will concurrently become a guarantor under this Agreement and will concurrently provide Security (and any registrations, filings and recordings in respect thereof, together with all related certificates and opinions) to the Agent (for the benefit of the Secured Parties) in substantially the same form and against the same collateral provided to the Senior Agent pursuant to the Senior Credit Agreement; and
- (b) any additional security (and any registrations, filings and recordings in respect thereof, together with all related certificates and opinions) provided by any Credit Party to the Senior Agent pursuant to the Senior Credit Agreement after the Effective Date will be concurrently provided to the Agent (for the benefit of the Secured Parties).

#### **7.5 Continuing Security**

Each item or part of the Security shall for all purposes be treated as a separate and continuing collateral security and shall be deemed to have been given in addition to and not in place of any other item or part of the Security or any other security now held or hereafter acquired by the Agent or the Lenders. No item or part of the Security shall be merged or be deemed to have been merged in or by this Agreement or any documents, instruments or acknowledgements delivered hereunder, or any simple contract debt or any judgment, and any realization of or steps taken under or pursuant to any security, instrument or agreement shall be independent of and not create a merger with any other right available to the Lenders or the Agent under any security, instruments or agreements held by it or at law or in equity.

#### **7.6 Effectiveness**

The Security and the security created by any other Credit Document constituted or required to be created shall be effective, and the undertakings as to the Security herein or in any other Credit Document shall be continuing, whether any Loans are then outstanding or any amounts thereby secured or any part thereof shall be owing before or after, or at the same time as, the creation of such Security Interests or before or after or upon the date of execution of any amendments to this Agreement.

#### **7.7 Release and Discharge of Security**

- (a) The Borrower and its Subsidiaries shall not be discharged from the Security or any part thereof, other than to the extent that such Security applies to a Permitted Disposition (in which case the Security shall, without further action, cease to apply to the subject matter thereof for the benefit of the Agent and the Lenders) except by a written release and discharge signed by the Agent with the prior written consent of the requisite Lenders in accordance with Article 12. If all of the Obligations have been repaid, paid, satisfied and discharged, as the case may be, in full and the Term Facility has been fully cancelled, then the Agent shall cause it and the Lenders' interest in the Security to be released and discharged at the expense of the Borrower.

- (b) The Lenders hereby authorize the Agent, upon the written request of the Borrower, to take such steps and to execute and deliver such releases, discharges, no-interest letters, agreements, instruments or other documents, in each case as may be necessary or reasonably requested by the Borrower to release Liens from any property or assets which are subject to a disposition permitted pursuant to Section 10.2(d) of the Senior Credit Agreement (as incorporated by reference herein pursuant to Section 8.1(b)).

## **ARTICLE 8 REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **8.1 Representations, Warranties and Covenants of the Senior Credit Agreement**

- (a) All representations and warranties made in the Senior Credit Agreement (including, for certainty, subject to Section 8.1(f) below, capitalized terms used therein and not otherwise defined in this Agreement) (the “**Representations and Warranties**”) are hereby incorporated in and form part of this Agreement with the same effect, *mutatis mutandis*, as if they were reproduced herein in their entirety and are reiterated by the Borrower in favour of the Lenders as of the date hereof and from time to time thereafter in accordance with this Agreement (including pursuant to Compliance Certificates issued in connection with Sections 8.1(b), 8.3(a) and 8.3(b)(ii)(C)); *provided* that for the purposes of the representation and warranty in Section 9.1(r) (*Subsidiaries*) the Borrower additionally represents and warrants that, as of the Effective Date, it has no Subsidiaries.
- (b) All covenants (affirmative, negative and reporting) made in the Senior Credit Agreement (including, for certainty, subject to Section 8.1(f) below, capitalized terms used therein and not otherwise defined in this Agreement) (the “**Covenants**”) are hereby incorporated in and form part of this Agreement with the same effect, *mutatis mutandis*, as if they were reproduced herein in their entirety and are reiterated by the Borrower in favour of the Lenders; *provided* that:
- (i) the covenants provided under Sections 10.1(a) (*Punctual Payment and Performance*), 10.1(u) (*Excess Cash Balances*), 10.1(e)(x) (*BDC Credit Agreement Reporting*), 10.1(w) (*Notices in Respect of the BDC Facility*), 10.2(k) (*Borrowing Base*), 10.2(r) (*Payments of BDC Facility Obligations*) and 10.4 (*Most Favoured Nations*) of the Senior Credit Agreement shall not be incorporated herein nor form part of this Agreement (other than the requirement to provide notices, information and other reporting under or in connection therewith);
  - (ii) the covenant provided under Section 10.1(p) of the Senior Credit Agreement as incorporated by reference herein shall be deemed to refer to Section 2.2 of this Agreement;
  - (iii) the covenant provided under Section 10.2(e) of the Senior Credit Agreement shall for the purposes of this Agreement be deemed to permit indebtedness incurred by any Credit Party pursuant to or in connection with this Agreement;

- (iv) the covenant provided under Section 10.2(s) of the Senior Credit Agreement shall for the purposes of this Agreement be deemed to refer to Section 7.2 of the Intercreditor Agreement instead of Section 7.1 of the Intercreditor Agreement;
  - (v) with respect to the covenant provided under Section 10.2(m) of the Senior Credit Agreement: (A) any cash or "Cash Equivalents" (as defined in the Senior Credit Agreement) which the Senior Agent agrees shall constitute an "Excluded Deposit" pursuant to sub-paragraph (d) of the definition of "Excluded Deposit" in the Senior Credit Agreement, shall not constitute an "Excluded Deposit" for the purposes of this Agreement unless agreed to in writing by the Lenders and (B) notwithstanding Section 8.1(f), the references therein to the "Agent" shall be deemed to be references to the Senior Agent and the references therein to "Lender" shall be deemed to be references to a Senior Lender;
  - (vi) the definition of "Permitted Debt" in the Senior Credit Agreement as incorporated by reference herein shall be deemed to include Senior Debt that is incurred in compliance with and is subject to the Intercreditor Agreement; and
  - (vii) any information or other document which, pursuant to any Covenant, the Agent may request, shall be requested by the Agent if requested by the Lenders in writing.
- (c) For certainty, these Covenants are reiterated for the benefit of the Lenders and no waiver, amendment or tolerance by the Senior Lenders under the Senior Credit Agreement will be applicable to the obligations of the Borrower to comply with such Covenants hereunder.
- (d) The Borrower agrees to (i) provide concurrently to the Agent, all such amendment, consent or waiver requests sent from time to time to the Senior Agent or the Senior Lenders with respect to the Senior Credit Agreement so that the same may be considered by the Lenders for approval under this Agreement; (ii) promptly upon execution thereof provide to the Agent with copies of all such amendments, consents or waivers with respect to the Senior Credit Agreement received from the Senior Agent or the Senior Lenders from time to time.
- (e) Any document to be furnished to the Agent by the Borrower hereunder must be supplied in a sufficient number of copies for each Lender and the Agent (unless such document is sent to the Agent by electronic mail) and promptly after receipt by the Agent, will be forwarded to the Lenders by the Agent.
- (f) The Representations and Warranties and Covenants incorporated by reference herein pursuant to Section 8.1(a) 8.1(b) and 8.1(d) will be interpreted taking into account such necessary conforming changes, including that: (i) references to "Agent", "Lenders", "Agreement", "Applicable Laws", "BDC Facility Documents", "BDC Facility Obligations", "Compliance Certificate", "Documents", "Default", "Event of Default", "Distribution", "Permitted Encumbrances", "Material Adverse Effect" and "Majority of the Lenders" in such Representations and Warranties and Covenants must be respectively read as referring to Agent, Lenders, Agreement,

Applicable Laws, Senior Credit Documents, Senior Credit Obligations, Compliance Certificate, Credit Documents, Default, Event of Default, Restricted Payment, Permitted Liens, Material Adverse Effect and Lenders in each case as defined in this Agreement; and (ii) references to “Guarantor” in such Representations and Warranties and Covenants must be read as referring to a Person that has granted a Guarantee to the Agent pursuant to or in connection with this Agreement.

## **8.2 Additional Representations and Warranties**

The Borrower further represents and warrants that:

### **(a) Authorization and Validity**

Each of the Credit Parties has all necessary power, authority and legal right to execute, deliver and perform its obligations under the Credit Documents to which it is a party, has duly authorized by all necessary action the execution, delivery and performance of its obligations under such Credit Documents and has duly and validly executed and delivered such Credit Documents. Each of the Credit Documents constitutes the legal, valid, binding and enforceable obligation of each of the Credit Parties which is a party thereto, subject to applicable bankruptcy, insolvency, reorganisation or similar laws affecting creditors' rights generally.

### **(b) No Breach**

The execution and delivery of each of the Credit Documents by each of the Credit Parties which is a party thereto and the performance by such Credit Party of its obligations thereunder will not conflict with, result in a breach of or require any consent under (i) the constitutive documents or by laws of such Credit Party, (ii) the provisions of the Senior Credit Agreement or any other indenture, material instrument, material agreement or material undertaking to which any Credit Party is a party or by which such Credit Party or any of its assets are bound or (iii) any material Applicable Law.

### **(c) Approvals**

None of the execution, delivery or performance of each of the Credit Documents by each of the Credit Parties which is a party thereto nor the consummation of any of the transactions contemplated therein requires any Necessary Authorization to be obtained or registration to be made by any Credit Party (except those already obtained or made and those not yet required to be obtained or made).

### **(d) No Default**

No Default has occurred and is continuing.

(e) **Solvency**

None of the Credit Parties, as of the Effective Date, is unable to pay its debts generally as such debts become due or is adjudicated bankrupt or insolvent.

(f) **Anti-Money Laundering Laws**

None of the Credit Parties nor any of their Affiliates (in the case of Affiliates, as it pertains to the business and operations of a Credit Party only) (a) is, to the Borrower's knowledge, under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering, drug trafficking, terrorist related activities or other money laundering predicate crimes under any Applicable Law; (b) has been assessed civil penalties under any Anti-Money Laundering Laws; or (c) has had any of its funds seized or forfeited in an action under any Anti-Money Laundering Laws.

(g) **Program Requirements**

- (i) The Borrower, directly or through its Subsidiaries, operates business activities in Canada.
- (ii) The Borrower and the other Credit Parties do not have a revenue model economically dependent on non-commercial sources such as direct government funding or private donations.
- (iii) The Borrower and the other Credit Parties have been, directly or indirectly, negatively impacted by the COVID-19 pandemic.
- (iv) The Borrower and the other Credit Parties were financially viable prior to the impact of the COVID-19 pandemic.
- (v) Neither the Borrower nor any other Credit Party:
  - (A) is an entity in which a government organization or body (other than indigenous entities or bands) owns equity interests (except if the Borrower or such other Credit Party, as applicable, is publicly traded);
  - (B) is an entity in which a union, charitable, religious or fraternal organization owns equity interests (except if the Borrower or such other Credit Party, as applicable, is publicly traded);
  - (C) is an entity in which equity interests are held by any single current member of the Parliament of Canada or any single current member of the Senate of Canada (except if the Borrower or such other Credit Party, applicable, is publicly traded); and
  - (D) promotes violence, incites hatred or discriminates on the basis of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

- (vi) Neither the Borrower, another Credit Party nor any of their Affiliates (i) have ever been determined to have committed tax evasion by any applicable judicial authority, including, for clarity, pursuant to sections 238 and 239 of the *Income Tax Act* (Canada) or of any other similar applicable provision of any Canadian federal or provincial statute(s) ("**Tax Evasion**"), and (ii) except as disclosed by the Borrower, been subject to any assertion or assessment by any governmental authority that the Borrower or its affiliates engaged in Tax Evasion.
- (vii) The proceeds of the Term Facility together with the Borrower's other sources of liquidity will enable a degree of continuity of the business of the Borrower during the current economic environment.
- (viii) Except for as expressly set out in this Agreement or as otherwise disclosed to the Agent in accordance with Section 8.3(b)(v), the Borrower Parties are not benefiting from the Business Credit Availability Program (BCAP) put in place by BDC or Export Development Canada or the Canada Large Employer Emergency Financing Facility to be administered through the Canada Enterprise Emergency Funding Corporation.

### **8.3 Additional Covenants**

The Borrower will, and will cause each of the other Credit Parties, to provide the following additional financial and other information:

#### **(a) Reporting Covenants of the Senior Credit Agreement**

The reporting and information Covenants set out in the Senior Credit Agreement will apply to this Agreement and the Borrower undertakes to provide concurrently to the Agent (in such capacity) such information and documents provided to the Senior Lenders (including a copy of the Senior Compliance Certificate).

#### **(b) Additional Reporting**

- (i) Annual – concurrent with the delivery of the Borrower's annual financial statements, an updated Multi-Year Business Plan;
- (ii) Monthly – as soon as available, but in any event, within 45 days following the end of each month:
  - (A) the consolidated balance sheet of Borrower as at the end of such month and the related consolidated statements of income and cash flows of the Borrower for such month and for the period from the beginning of the then current Fiscal Year to the end of such month setting forth in each case, in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail, together with a certification by a senior finance officer, subject to the absence of footnotes, normal audit and year-end adjustments and the effects of acquisition accounting;

- (B) until the Drawdown Outside Date (unless extended by the Lenders by written notice to the Borrower), a rolling 13-week update of the Effective Date 13 Week Cash Flow in form and substance acceptable to the Agent together with commentary on any material negative variances; and
    - (C) concurrent with the delivery of the monthly financial statements described in paragraph 8.3(b)(ii)(A) above (other than the monthly financial statements delivered in respect of the last month of a Fiscal Quarter), a duly executed and completed Compliance Certificate certifying *inter alia* that no Default or Event of Default has occurred and is continuing as of the date of such Compliance Certificate; and
  - (iii) From time to time, as soon as reasonably practicable, and in any event no later than 3 Business Days after becoming aware of a Default or Event of Default (including for certainty a "Default" or "Event of Default" under the Senior Credit Agreement), a notice of a Default or Event of Default, together with an officer's certificate describing in detail such Default or Event of Default and specifying the steps, if any, being taken to cure or remedy the same.
  - (iv) From time to time, as soon as reasonably practicable, and in any event no later than one Business Day after becoming aware of the same, notice that any borrowing requested by the Borrower under the Senior Credit Agreement has been denied by the Senior Agent or the Senior Lenders.
  - (v) From time to time, no later than 10 Business Days prior to receiving any benefit from the Business Credit Availability Program (BCAP) put in place by BDC (other than pursuant to this Agreement) or Export Development Canada or the Canada Large Employer Emergency Financing Facility to be administered through the Canada Enterprise Emergency Funding Corporation, the Borrower will provide the terms of such program to the Agent.
- (c) **Payment and Performance**

The Borrower shall duly and punctually pay the principal of all Borrowings, all interest thereon and all fees and other Obligations required to be paid by the Borrower hereunder and under the other Credit Documents in the manner specified hereunder and the Borrower shall perform and observe all of its obligations under this Agreement and under any other Credit Document to which it is a party.

(d) **Most Favoured Nations**

The Borrower acknowledges that it is the intention of the Lenders that the affirmative, negative, reporting and financial covenants and the events of default under this Agreement are at all times materially similar to such covenants and events of default under the Senior Credit Agreement (to the extent applicable) and agrees that it will not agree to any amendments or additions to such

covenants or events of default under the Senior Credit Agreement without also offering to amend or add to the similar covenants or events of default under this Agreement in the same manner (as adjusted to the extent necessary to apply to the Term Facility and this Agreement, it being understood and agreed that with respect to any financial covenant, the level thereof will be set with an additional cushion to be agreed between the Borrower and the Lenders).

(e) **Know your Customer Laws**

As soon as reasonably practicable, provide all information with respect to the Credit Parties, as may be reasonably requested by any of the Lenders, or any prospective assignee of or participant in the commitment of a Lender, in order for any of them to comply with any Anti-Money Laundering Laws and Anti-Corruption Laws and satisfy their “know your customer” and reporting obligations under Applicable Laws.

(f) **Further Assurances**

The Borrower will, and will cause each of the other Credit Parties to (i) cooperate with the Agent and the Lenders and provide and execute such further information, instruments and documents (including such financial and other information) as the Agent and each Lender may reasonably request to carry out to its satisfaction the transactions contemplated by the Credit Documents (including to better assure and/or perfect any of the Security or the priority thereof); and (ii) participate in post-funding surveys conducted by the Government of Canada or any of its agents.

(g) **Anti-Corruption Laws and Sanctions**

Each Credit Party will maintain in effect policies and procedures designed in a commercially reasonable manner to achieve compliance by the Credit Parties, their Subsidiaries, and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

**8.4 Reiteration of the Representations and Warranties**

The Borrower will ensure that all representations made in this Agreement are true and correct at all times, except for representations made as of a date expressly stated therein.

**ARTICLE 9 EVENTS OF DEFAULT AND REMEDIES**

**9.1 Events of Default**

The occurrence of one or more of the following events constitutes an event of default (“**Event of Default**”) under the Credit Documents:

- (a) Principal Default: if the Borrower fails to pay the principal of any Borrowing hereunder when due and payable;

- (b) Other Payment Default: if the Borrower fails to pay:
- (i) any interest (including, if applicable, default interest) accrued on any Borrowings; or
  - (ii) fees or any other amount not specifically referred to in paragraph (a) above or in this (b) payable by the Borrower under a Credit Document,
- in each case within 3 Business Days of when the same was due and payable;
- (c) Breach of Certain Covenants: the Borrower fails to observe or perform any covenant in Sections 10.1(u) or 10.2 of the Senior Credit Agreement (as and to the extent incorporated by reference herein);
- (d) Breach of Other Covenants: if the Borrower or a Subsidiary fails to observe or perform any covenant or obligation herein (including, for certainty, such covenants and obligations set out in the Senior Credit Agreement and incorporated herein by reference pursuant to Section 8.1) or in any other Credit Document required on its part to be observed or performed (other than a covenant or condition whose breach or default in performance is specifically dealt with elsewhere in this Section 9.1) and, after notice has been given by the Agent to the Borrower or such Subsidiary specifying such default and requiring the Borrower or such Subsidiary to remedy or cure the same, the Borrower or such Subsidiary shall fail to remedy such default within a period of 30 days after the giving of such notice;
- (e) Incorrect Representations: if any representation or warranty made or deemed to be made by the Borrower or any Subsidiary herein (including, for certainty, such representations and warranties set out in the Senior Credit Agreement and incorporated herein by reference pursuant to Section 8.1) or in any other Credit Document shall prove to have been incorrect or misleading in any respect on and as of the date made and, if curable, the facts or circumstances which make such representation or warranty incorrect or misleading are not remedied and the representation or warranty in question remains incorrect or misleading more than 30 days after the Agent notifies the Borrower of the same;
- (f) Involuntary Insolvency: if a decree or order of a court of competent jurisdiction is entered adjudging the Borrower or a Subsidiary a bankrupt or insolvent under the *Companies' Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada), the *Winding-up and Restructuring Act* (Canada) or any other bankruptcy, insolvency or analogous laws or ordering the winding up or liquidation of its affairs;
- (g) Idem: if any case, proceeding or other action shall be instituted in any court of competent jurisdiction against the Borrower or any Subsidiary, seeking in respect of it an adjudication in bankruptcy, reorganization, dissolution, winding up, liquidation, a composition, proposal or arrangement (including an arrangement or proceeding under the *Canada Business Corporations Act* or the *Business Corporations Act* (Alberta) or any other analogous provincial or federal statute, as applicable) with creditors, a readjustment of debts, the appointment of trustee in bankruptcy, receiver, receiver and manager, interim receiver, custodian,

sequestrator, liquidator or other Person with similar powers with respect to the Borrower or any Subsidiary or of all or any substantial part of its assets, or any other like relief in respect of the Borrower or any Subsidiary under any bankruptcy or insolvency law and:

- (i) such case, proceeding or other action results in an entry of an order for such relief or any such adjudication or appointment, or
  - (ii) such case, proceeding or other action shall continue undismitted, or unstayed and in effect, for any period of 30 consecutive days;
- (h) Voluntary Insolvency: if the Borrower or any Subsidiary makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors, makes any proposal under the *Bankruptcy and Insolvency Act* (Canada) or any comparable law, seeks relief under the *Companies' Creditors Arrangement Act* (Canada), the *Winding-up and Restructuring Act* (Canada) or any other bankruptcy, insolvency or analogous law, files a petition or proposal to take advantage of any act of insolvency by it, consents to or acquiesces in the appointment of a trustee in bankruptcy, receiver, receiver and manager, interim receiver, custodian, sequestrator, liquidator or other Person with similar powers over itself or over all or any substantial portion of its assets, or files a petition or otherwise commences any proceeding seeking any reorganization, arrangement, composition, administration, compromise, restructuring or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditors' rights (including an arrangement or proceeding under the *Canada Business Corporations Act* or the *Business Corporations Act* (Alberta) or any other analogous provincial or federal statute, as applicable) or consents to, or acquiesces in, the filing of such assignment, proposal, relief, petition, proposal, appointment or proceeding;
- (i) Dissolution: except as permitted by Sections 10.2(c) and 10.2(j) of the Senior Credit Agreement (as incorporated herein by reference pursuant to Section 8.1), if proceedings are commenced for the dissolution, liquidation or winding up of the Borrower or any Subsidiary unless such proceedings are being actively and diligently contested in good faith to the satisfaction of the Majority Lenders, acting reasonably;
- (j) Security Realization: if creditors of the Borrower or any Subsidiaries having a Lien against or in respect of the property and assets thereof, or any part thereof, realize upon or enforce any such security against such property and assets or any part thereof having an aggregate fair market value in excess of the Threshold Amount (or the Equivalent Amount thereof in US Dollars or the equivalent thereof in any other currency) and such realization or enforcement shall continue in effect and not be released, discharged or stayed within the lesser of 30 days and the period of time prescribed under Applicable Laws for the completion of the sale of or realization against the assets subject to such seizure or attachment;
- (k) Seizure: if property and assets of the Borrower and its Subsidiaries or any part thereof having an aggregate fair market value in excess of the Threshold Amount (or the Equivalent Amount thereof in US Dollars or the equivalent thereof in any

other currency) are seized or otherwise attached by anyone pursuant to any legal process or other means, including distress, execution or any other step or proceeding with similar effect and such attachment, step or other proceeding shall continue in effect and not be released, discharged or stayed within the lesser of 30 days and the period of time prescribed under Applicable Laws for the completion of the sale of or realization against the assets subject to such seizure or attachment;

- (l) Judgment: if one or more final judgments, decrees or orders shall be awarded against the Borrower or any of the Subsidiaries (or any combination thereof) in an aggregate amount in excess of the Threshold Amount (or the Equivalent Amount thereof in US Dollars or the equivalent thereof in any other currency) and, the Borrower or relevant Subsidiary, as applicable, has not satisfied such judgments, decrees or orders or provided security for any of such judgments, decrees or orders within 30 days of such judgment, decree or order being awarded;
- (m) Payment Cross Default: if the Borrower or any of its Subsidiaries (or any combination thereof) defaults in the payment when due (whether at maturity, upon acceleration, or otherwise) of Debt or Financial Instrument Obligations thereof (other than Senior Debt) in aggregate in excess of the Threshold Amount (or the Equivalent Amount thereof in US Dollars or the equivalent thereof in any other currency);
- (n) Event Cross Default: if a default, event of default or other similar condition or event (however described) in respect of the Borrower or any of its Subsidiaries (or any combination thereof, without duplication) occurs or exists under any indentures, credit agreements, agreements or other instruments evidencing or relating to Debt or Financial Instrument Obligations thereof (other than Senior Debt) (individually or collectively) in an aggregate amount in excess of the Threshold Amount (or the Equivalent Amount thereof in United States Dollars or the equivalent thereof in any other currency) and such default, event or condition has resulted in such Debt or Financial Instrument Obligations becoming, or becoming capable at such time of being declared, due and payable thereunder before it would otherwise have been due and payable;
- (o) Senior Debt Cross Default: if a default, event of default or other similar condition or event (however described) occurs or exists under any indentures, credit agreements, agreements or other instruments evidencing or relating to Senior Debt and such default, event of default, condition or event has resulted in all or any part of such Senior Debt becoming due and payable thereunder before it would otherwise have been due and payable; or (ii) the Borrower defaults in the payment of the principal amount of any Debt under the Senior Credit Agreement at the final maturity date thereof;
- (p) Cease to Carry on Business: if, subject to Sections 10.2(c) and 10.2(j) of the Senior Credit Agreement (as incorporated herein pursuant to Section 8.1), the Borrower or any Subsidiary ceases to carry on business;
- (q) Change of Control: if there is a Change of Control;

- (r) Qualified Auditor Report: if the auditors' opinion required to be delivered with the annual audited financial statements that are required to be delivered by the Borrower pursuant to Section 10.1(e)(iii) of the Senior Credit Agreement contains a qualification which, or which evidences or relates to an event, matter or circumstance which, would reasonably be expected to have a Material Adverse Effect and (i) such qualification, event, matter or circumstance is not rectified or otherwise dealt with to the satisfaction of the Majority Lenders, acting reasonably, within a period of 30 days after written notice thereof by the Agent or BDC to the Borrower; or (ii) within such 30 day period, the Borrower has not delivered a plan to the Agent and BDC as to how it plans to rectify or otherwise deal with such qualification, event matter or circumstance (such plan to include the time frame within which the Borrower proposes to rectify or otherwise deal with such qualification, event, matter or circumstance) and such plan is not satisfactory to the Majority Lenders, acting reasonably, and following delivery and acceptance of such plan, the Borrower fails to diligently pursue the same and rectify or otherwise deal with such qualification, event, matter or circumstance in accordance with the plan and within the proposed time frame;
- (s) Loss and Priority of Security: except for Permitted Liens, and subject to the Intercreditor Agreement, if any of the Security shall cease to be a valid first priority Lien against the property, assets and undertaking of the Borrower or any Subsidiary as against third parties (and the same is not forthwith effectively rectified or replaced by the Borrower or such Subsidiary, as applicable);
- (t) Invalidity: if any of this Agreement, any Security or any other Credit Document or any material provision of any of the foregoing shall at any time for any reason cease to be in full force and effect, be declared to be void or voidable (and the same is not forthwith effectively rectified or replaced by the Borrower) or shall be repudiated, or the validity or enforceability thereof shall at any time be contested by the Borrower or any Subsidiary, or the Borrower or any Subsidiary shall deny that it has any or any further liability or obligation thereunder, or at any time it shall be unlawful or impossible for them to perform any of their respective obligations hereunder or under any other Credit Document;
- (u) Adverse Proceedings: if one or more actions, suits or proceedings are brought against or affect the Borrower or a Subsidiary before any court or before any governmental authority which, if successful, would reasonably be expected to have a Material Adverse Effect, unless the action, suit or proceedings are being diligently contested in good faith and a reserve has been provided in respect thereof if required and in accordance with GAAP; or
- (v) Abandonment/Reclamation Orders: if the Borrower or any Subsidiary receives one or more Abandonment/Reclamation Orders from any applicable Energy Regulator and (i) the aggregate estimated cost of compliance with all such outstanding orders, together with the aggregate amount of all such security deposits (without duplication) determined at the time of receipt thereof by the Borrower or such Subsidiary, as applicable, would exceed 10% of the then current Borrowing Base (provided that, for the purpose of determining any such estimated cost, the Borrower shall provide the Agent with a reasonable and factually supportable estimate of such costs within 10 Business Days of its receipt of the applicable order and shall deliver to each Lender all such other

relevant information related to such estimate as may be reasonably required by any such Lender) and (ii) the Borrower or such Subsidiary, as applicable, has not complied with the terms of the applicable Abandonment/Reclamation Order(s) or the circumstances identified in such order(s) remain unrectified (as such order(s) may be amended, supplemented or otherwise modified by the issuing Energy Regulator) by any deadline date for compliance or rectification as set forth therein (as any such date may be extended as a result of any appeal period in respect thereof) (the "**Compliance Date**"), unless the Majority Lenders have received evidence satisfactory to them, acting reasonably, (A) of such compliance or rectification on or before the Compliance Date or (B) that such order has been withdrawn by the applicable Energy Regulator on or before the Compliance Date.

## **9.2 Remedies**

If an Event of Default occurs and is continuing (as such may be determined by any Lender), on giving a notice to the Borrower, all or any of the following actions may be taken:

- (a) the Agent (on instruction of (i) BDC and for and on behalf of all Lenders, or (ii) BDC and some or all of the other Lenders, and for and on behalf of all Lenders) may terminate the right of the Borrower to use the Term Facility;
- (b) the Agent (on instruction of (i) BDC and for and on behalf of all Lenders, or (ii) BDC and some or all of the other Lenders, and for and on behalf of all Lenders) may declare all indebtedness of the Borrower to the Lenders under the Credit Documents to be immediately payable and demand immediate payment of the whole or part thereof; and
- (c) the Agent (on instruction of (i) BDC and for and on behalf of all Lenders, or (ii) BDC and some or all of the other Lenders, and for and on behalf of all Lenders) may exercise all or any of the rights and remedies of the Secured Parties including their rights and remedies under any Credit Document or under Applicable Laws. No remedy for the enforcement of the rights of the Secured Parties will be exclusive of or dependent on any other remedy but any one or more of such remedies may from time to time be exercised independently or in combination;

provided that all indebtedness of the Borrower under the Credit Documents will automatically become due and payable without any notice upon the occurrence of any Event of Default specified in Sections 9.1(f), 9.1(g) or 9.1(h).

## **9.3 Remedies Cumulative and Waivers**

For greater certainty, it is expressly understood and agreed that the respective rights and remedies of the Secured Parties hereunder or under any other Credit Document or instrument executed pursuant to this Agreement are cumulative and are in addition to and not in substitution for any rights or remedies provided by Applicable Law or by equity; and any single or partial exercise by the Lenders or by the Agent of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in this Agreement or other Credit Document will not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which any one or more of the Secured Parties may be

lawfully entitled for such default or breach. Any waiver by the Secured Parties of the strict observance, performance or compliance with any term, covenant, condition or other matter contained herein and any extension of time or other indulgence granted, either expressly or by course of conduct, by the Secured Parties will be effective only in the specific instance and for the purpose for which it was given and will be deemed not to be a waiver of any rights and remedies of the Secured Parties under this Agreement or any other Credit Document as a result of any other default or breach hereunder or thereunder. The omission by the Secured Parties to notify the Borrower of the occurrence of a Default or Event of Default will not constitute or be deemed to constitute a waiver of such Default or Event of Default.

#### **9.4 Saving**

The Secured Parties will not be under any obligation to the Borrower or any other Person to realize any collateral or enforce the Security or any part thereof or to allow any of the collateral to be sold, dealt with or otherwise disposed of. The Secured Parties will not be responsible or liable to the Credit Parties or any other Person for any loss or damage upon the realization or enforcement of, the failure to realize or enforce the collateral or any part thereof or the failure to allow any of the collateral to be sold, dealt with or otherwise disposed of or for any act or omission on their respective parts or on the part of any director, officer, agent, servant or adviser in connection with any of the foregoing, except that a Secured Party may be responsible or liable for any loss or damage arising from the wilful misconduct or gross negligence of that Secured Party.

#### **9.5 Perform Obligations**

If an Event of Default has occurred and is continuing and if the Borrower has failed to perform any of its covenants or agreements in the Credit Documents, the Majority Lenders may, but will be under no obligation to, instruct the Agent on behalf of the Lenders to perform any such covenants or agreements in any manner deemed fit by it without thereby waiving any rights to enforce the Credit Documents. The reasonable expenses (including any legal costs) paid by the Secured Parties in respect of the foregoing will be an obligation of the Borrower and will be secured by the Security.

#### **9.6 Third Parties**

No Person dealing with any of the Secured Parties or any agent thereof will be required to inquire whether the Security has become enforceable, or whether the powers which the Secured Parties are purporting to exercise have become exercisable, or whether any of the Borrower's Obligations remain outstanding upon the security thereof, or as to the necessity or expediency of the stipulations and conditions subject to which any sale will be made, or otherwise as to the propriety or regularity of any sale or other disposition or any other dealing with the collateral charged by such Security or any part thereof.

#### **9.7 Realization of Security**

Each of the Lenders acknowledges that the Agent holds the Security to secure all of the Obligations owing by the Borrower or any other Credit Party to each of the Secured Parties and upon the event of the occurrence and continuance of an Event of Default, the Agent will act on the written instructions of (i) BDC (for and on behalf of the Lenders), or (ii) BDC and one or more of the other Lenders (for and on behalf of the Lenders), in each case as provided in Section 9.2, in connection with the exercise of the rights and remedies of the Secured Parties

thereunder and, subject to Applicable Law, will distribute the net sale proceeds of realization of the Security to the Lenders in accordance with their respective Pro Rata Shares.

### **9.8 Consultant**

The Borrower agrees that, at any time after the occurrence of and during the continuance of an Event of Default, the Secured Parties (at the request of (i) BDC or (ii) BDC and one or more of the other Lenders, in each case on behalf of the Lenders) will be entitled to appoint a financial consultant (hereinafter referred to as the “**Consultant**”) for the purposes of reviewing the operations, property, assets and prospects of the Credit Parties from time to time thereafter. The Borrower agrees and will cause each of the other Credit Parties to co-operate fully with the Consultant including to provide all such information and provide access to all such books, records and premises as the Consultant will reasonably request from time to time. The costs and expenses of the Consultant will be for the account of the Borrower.

## **ARTICLE 10 RELATIONSHIP BETWEEN LENDERS**

### **10.1 Direct Payment to a Lender**

Except as otherwise provided herein, if a Lender receives, otherwise than through the Agent, a payment on account of the Term Facility, such Lender will remit the payment to the Agent, for distribution among all Lenders under the Term Facility.

### **10.2 Sharing of Payments and Adjustments**

If any Lender, by exercising any right of setoff or counterclaim or otherwise, obtains any payment or other reduction that might result in such Lender receiving payment or other reduction of a proportion of the aggregate amount of its Borrowings and accrued interest thereon or other Obligations greater than its Pro Rata Share thereof as provided herein, then the Lender receiving such payment or other reduction will (a) notify the Agent of such fact, and (b) purchase (for cash at face value) participations in the Borrowings and such other Obligations owing to the other Lenders, or make such other adjustments as will be equitable, so that the benefit of all such payments will be shared by the Lenders rateably in accordance with the aggregate amount of principal of and accrued interest on their respective Borrowings and other amounts owing them, provided that:

- (a) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations will be rescinded and the purchase price restored to the extent of such recovery, without interest,
- (b) the provisions of this Section will not be construed to apply to (x) any payment made by any Credit Party pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Borrowings to any assignee or participant, other than to any Credit Party or any Affiliate of a Credit Party (as to which the provisions of this Section will apply); and
- (c) the provisions of this Section will not be construed to apply to (w) any payment made while no Event of Default has occurred and is continuing in respect of obligations of the Borrower to such Lender that do not arise under or in connection with the Credit Documents, (x) any payment made in respect of an

obligation that is secured by a Permitted Lien or that is otherwise entitled to priority over the Borrower's Obligations, (y) any reduction arising from an amount owing to a Credit Party upon the termination of derivatives entered into between such Credit Party and such Lender, or (z) any payment to which such Lender is entitled as a result of any form of credit protection obtained by such Lender.

The Credit Parties consent to the foregoing and agree, to the extent they may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Credit Party rights of setoff and counterclaim and similar rights of a Lender with respect to such participation as fully as if such Lender were a direct creditor of each Credit Party in the amount of such participation.

### **10.3 Sharing of Information**

The Secured Parties may share with each other (and with their Affiliates) any information held by them regarding the financial condition, business or property of the Credit Parties or relating to matters contemplated by the Credit Documents.

### **10.4 Nature of Lender's Obligations**

The covenants and obligations of the Lenders under this Agreement and the other Credit Documents are separate and several (and not joint or joint and several) and no Lender will be liable or otherwise responsible for the covenants and obligations of any other Lender.

## **ARTICLE 11 THE AGENT AND THE LENDERS**

### **11.1 Appointment and Authority.**

Subject to Section 11.7, each of the Lenders hereby irrevocably appoints the Person identified elsewhere in this Agreement as the Agent to act on its behalf as the Agent hereunder and under the other Credit Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Secured Parties, and no Credit Party will have rights as a third party beneficiary of any of such provisions.

### **11.2 Rights as a Lender.**

The Person serving as the Agent hereunder will have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term "Lender" or "Lenders" will, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Credit Party or any Affiliate thereof as if such Person were not the Agent and without any duty to account to the Lenders.

### **11.3 Exculpatory Provisions**

- (a) The Agent will not have any duties or obligations except those expressly set forth herein and in the other Credit Documents. Without limiting the generality of the foregoing, the Agent:
  - (i) will not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;
  - (ii) will not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Credit Documents that the Agent is required to exercise as directed in writing by the Majority Lenders (or (A) by all Lenders when the consent or approval of all Lenders is required pursuant to Section 12.3; or (B) by BDC when only the consent or approval of BDC is required pursuant to Section 12.2), but the Agent will not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Credit Document or Applicable Law; and
  - (iii) will not, except as expressly set forth herein and in the other Credit Documents, have any duty to disclose, and will 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 Agent or any of its Affiliates in any capacity.
- (b) The Agent will not be liable for any action taken or not taken by it (i) with the consent or at the request of the Majority Lenders (or (A) by all Lenders when the consent or approval of all Lenders is required pursuant to Section 12.3; or (B) by BDC when only the consent or approval of BDC is required pursuant to Section 12.2), or such other number or percentage of the Lenders as the Agent believes in good faith is necessary, under the provisions of the Credit Documents; or (ii) in the absence of its own gross negligence or wilful misconduct.
- (c) Except as otherwise expressly specified in this Agreement the Agent will not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Credit Document; (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith; (iii) 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 Event of Default; (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Credit Document or any other agreement, instrument or document; or (v) the satisfaction of any condition specified in this Agreement, other than to confirm receipt of items expressly required to be delivered to the Agent.

### **11.4 Reliance by Agent.**

The Agent will be entitled to rely upon, and will 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 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 will not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Borrowing that by its terms must be fulfilled to the satisfaction of a Lender, the Agent may presume that such condition is satisfactory to such Lender unless the Agent will have received notice to the contrary from such Lender prior to the making of such Borrowing. The Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it and will not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

#### **11.5 Indemnification of Agent.**

Each Lender severally agrees to indemnify the Agent and hold it harmless (to the extent not reimbursed by the Borrower), ratably according to its Pro Rata Share (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, financial consultants or other professionals retained by the Agent from time to time) which may be incurred by or asserted against the Agent in any way relating to or arising out of the Credit Documents or the transactions therein contemplated. However, no Lender will be liable for any portion of such losses, claims, damages, liabilities and related expenses resulting from the Agent's gross negligence or wilful misconduct.

#### **11.6 Delegation of Duties.**

The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Document by or through any one or more sub-agents appointed by the Agent from among the Lenders (including the Person serving as Agent) and their respective Affiliates. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The provisions of this Article and other provisions of this Agreement for the benefit of the Agent will apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and will apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent.

#### **11.7 Replacement of Agent**

- (a) In the event (i) the Agent ceases to be a Senior Lender; or (ii) there is another Commercial Lender (other than the Agent), the Agent may give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, BDC will have the right in consultation with the Borrower, to appoint a successor, which will be a Lender having an office in Canada, or an Affiliate of any such Lender with an office in Canada. The Agent may also be removed at any time by BDC when the Agent is consistently failing to perform its duties under this Agreement upon 30 days' notice to the Agent and the Borrower as long as BDC, in consultation with the Borrower, appoints and obtains the acceptance of a successor within such 30 days, which successor will be a Lender having an office in Calgary, Toronto or Montréal, or an Affiliate of any such Lender with an office in Canada.

- (b) If no such successor will have been so appointed by BDC and will have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent meeting the qualifications specified in Section 11.7(a) (which for certainty may not be BDC), provided that if the Agent will notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation will nonetheless become effective in accordance with such notice and (i) the retiring Agent will be discharged from its duties and obligations hereunder and under the other Credit Documents (except that in the case of any collateral security held by the Agent on behalf of the Lenders under any of the Credit Documents, the retiring Agent will continue to hold such collateral security until such time as a successor Agent is appointed) and (ii) all payments, communications and determinations provided to be made by, to or through the Agent will instead be made by or to each Lender directly, until such time as BDC appoints a successor Agent as provided for above in the preceding paragraph.
- (c) Upon a successor's appointment as Agent hereunder, such successor will succeed to and become vested with all of the rights, powers, privileges and duties of the former Agent, and the former Agent will be discharged from all of its duties and obligations hereunder or under the other Credit Documents (if not already discharged therefrom as provided in the preceding paragraph). The fees payable by the Borrower to a successor Agent will 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 Agent, the provisions of this Article 11 and of Section 13.5 will continue in effect for the benefit of such former Agent, its sub-agents and their respective Affiliates in respect of any actions taken or omitted to be taken by any of them while the former Agent was acting as Agent.
- (d) If there is no Lender that meets the qualifications specified in Section 11.7(a) except for BDC or if none of BDC and the other Lenders (excluding the existing Agent) is prepared to act as the successor Agent, then a Person that is not a Lender but has nationally recognized qualifications and experience in performing the duties of an administrative agent, may be appointed as the successor Agent.

#### **11.8 Non-Reliance on Agent and Other Lenders.**

Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their respective Affiliates, officers or employees 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 also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their respective Affiliates, officers or employees and based on such documents and information as it will 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 Document or any related agreement or any document furnished hereunder or thereunder.

#### **11.9 Collective Action of the Lenders.**

Each of the Lenders hereby acknowledges that to the extent permitted by Applicable Law, any collateral security and the remedies provided under the Credit Documents to the

Lenders are for the benefit of the Lenders 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 Agent upon the instruction of the Majority Lenders (or (A) by all Lenders when the consent or approval of all Lenders is required pursuant to Section 12.3; or (B) by BDC when only the consent or approval of BDC is required pursuant to Section 12.2). Accordingly, notwithstanding any of the provisions contained herein or in any collateral security, each of the Lenders hereby covenants and agrees that it will not be entitled to take any action hereunder or thereunder including, without limitation, any declaration of default hereunder or thereunder or acceleration of the Borrowings but that any such action will be taken only by the Agent upon the prior written instruction of the Majority Lenders (or (A) by all Lenders when the consent or approval of all Lenders is required pursuant to Section 12.3; or (B) by BDC when only the consent or approval of BDC is required pursuant to Section 12.2). Each of the Lenders hereby further covenants and agrees that upon any such written instruction being given, it will co-operate fully with the Agent to the extent requested by the Agent. Notwithstanding the foregoing, in the absence of instructions from the Majority Lenders (or (A) by all Lenders when the consent or approval of all Lenders is required pursuant to Section 12.3; or (B) by BDC when only the consent or approval of BDC is required pursuant to Section 12.2) and where in the sole opinion of the Agent, acting reasonably and in good faith, the exigencies of the situation warrant such action, the Agent may, without notice to or consent of BDC or the other Lenders, take such action on behalf of the Lenders as it deems appropriate or desirable in the interest of the Lenders.

#### **11.10 Payments by the Borrower**

Prior to an Event of Default that is continuing, all payments made by or on behalf of the Borrower pursuant to this Agreement will be made to and received by the Agent on behalf of the Lenders and will be distributed by the Agent to the Lenders in accordance with their respective Pro Rata Shares as soon as possible upon receipt by the Agent.

#### **11.11 Knowledge and Required Action**

The Agent will not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default (other than the non-payment of any principal, interest or other amount to the extent the same is required to be paid to the Agent for the account of the Lenders) unless the Agent has received written notice from a Lender or the Borrower specifying such Default or Event of Default and stating that such notice is given pursuant to this Section. In the event that the Agent receives such a notice, it will give prompt notice thereof to the Lenders, and will also give prompt notice to the Lenders of each non-payment of any amount required to be paid to the Agent for the account of the Lenders. The Agent will take such action with respect to such Default or Event of Default as will be directed by the Majority Lenders (or (A) by all Lenders when the consent or approval of all Lenders is required pursuant to Section 12.3; or (B) by BDC when only the consent or approval of BDC is required pursuant to Section 12.2); provided that, unless and until the Agent will have received such direction the Agent may, but will not be obliged to, take such action, or refrain from taking such action, with respect to such Default or Event of Default as it will deem advisable in the best interest of the Lenders; and provided further that the Agent will not in any case be required to take any such action which it determines to be contrary to the Credit Documents or to any Applicable Law.

### **11.12 Request for Instructions**

The Agent may at any time request instructions from the Majority Lenders (or (A) by all Lenders when the consent or approval of all Lenders is required pursuant to Section 12.3; or (B) by BDC when only the consent or approval of BDC is required pursuant to Section 12.2) with respect to any actions or approvals which, by the terms of any of the Credit Documents, the Agent is permitted or required to take or to grant, and the Agent will be absolutely entitled to refrain from taking any such action or to withhold any such approval and will not be under any liability whatsoever as a result thereof until it will have received such instructions from the Majority Lenders (or (A) by all Lenders when the consent or approval of all Lenders is required pursuant to Section 12.3; or (B) by BDC when only the consent or approval of BDC is required pursuant to Section 12.2). No Lender will have any right of action whatsoever against the Agent as a result of the Agent acting or refraining from acting under the Credit Documents in accordance with instructions from the Majority Lenders (or (A) by all Lenders when the consent or approval of all Lenders is required pursuant to Section 12.3; or (B) by BDC when only the consent or approval of BDC is required pursuant to Section 12.2). The Agent will in all cases be fully justified in failing or refusing to take or continue any action under the Credit Documents unless it will have received further assurances to its satisfaction from the Lenders of their indemnification obligations under Section 11.5 against any and all liability and expense which may be incurred by it by reason of taking or continuing to take such action, and unless it will be secured in respect thereof as it may deem appropriate.

### **11.13 Payments by Agent**

For greater certainty, the following provisions will apply to any and all payments made by the Agent to the Lenders hereunder:

- (a) the Agent will be under no obligation to make any payment (whether in respect of principal, interest, fees or otherwise) to any Lender until an amount in respect of such payment has been received by the Agent from the Borrower; provided however that unless the Agent will have received notice from the Borrower prior to the date on which any payment is due to the Agent for the account of any Lender hereunder that the Borrower will not make such payment, the Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute the amount due to the 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 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 Agent, at a rate determined by the Agent in accordance with prevailing banking industry practice on interbank compensation;
- (b) if the Agent receives less than the full amount of any payment of principal, interest, fees or other amount owing by the Borrower under this Agreement, then the Agent will have no obligation to remit to each Lender any amount other than such Lender's Pro Rata Share of the amount actually received by the Agent;
- (c) if any Lender advances more or less than its Pro Rata Share of a requested Borrowing, such Lender's entitlement to such payment will be increased or

reduced, as the case may be, in proportion to the amount actually advanced by such Lender;

- (d) the Agent acting reasonably and in good faith will, after consultation with the Lenders in the case of any dispute, determine in all cases the amount of all payments to which each Lender is entitled and such determination will, in the absence of manifest error, be binding and conclusive;
- (e) upon request of any Lender, the Agent will deliver a statement detailing any of the payments to the Lenders referred to herein; and
- (f) all payments by the Agent to a Lender hereunder will be made to such Lender at its address set forth in the signature pages on this Agreement or on the applicable assignment agreement unless notice to the contrary is received by the Agent from such Lender.

#### **11.14 Additional Rights of Agent**

- (a) In administering the Term Facility, the Agent may retain, at the expense of the Lenders if such expenses are not recoverable from the Borrower, such solicitors, counsel, auditors and other experts and agents as the Agent may select, in its sole discretion, acting reasonably and in good faith after consultation with the Lenders.
- (b) Except in its own right as a Lender, the Agent will not be required to advance its own funds for any purpose, and in particular, will not be required to pay with its own funds insurance premiums, taxes or public utility charges or the cost of repairs or maintenance with respect to the assets which are the subject matter of the Security, nor will it be required to pay with its own funds the fees of solicitors, counsel, auditors, experts or agents engaged by it as permitted hereby.
- (c) The Agent may round an individual Lender's Pro Rata Share of any requested Borrowing to the nearest \$1,000 in Canadian Dollars or United States Dollars, as the case may be.
- (d) The Agent will be entitled to scan and provide by email to the Lenders or post to Syndtrak (or any other equivalent service) all financial and other information it receives from the Borrower.

#### **11.15 Electronic Communications**

- (a) Notices and other communications by the Agent to the Lenders or from the Lenders to the Agent hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent, provided that the foregoing will not apply to notices to any Lender of Borrowings to be made if such Lender has notified the Agent that it is incapable of receiving such notices by electronic communication. The Agent or the Borrower may, in its discretion, acting reasonably, 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.

- (b) Unless the Agent otherwise prescribes, (i) notices and other communications sent to an email address will 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 will be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website will be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

### **11.16 Provisions for Benefit of Lenders Only**

The provisions of Article 11 and Article 12 relating to the rights and obligations of the Lenders *inter se* or the rights and obligations of the Lenders and the Agent *inter se* will be operative as between the Lenders and the Agent only, and the Credit Parties will not have any rights under or be entitled to rely for any purposes upon such provisions.

## **ARTICLE 12 DECISIONS, WAIVERS AND AMENDMENTS**

### **12.1 Decisions, Amendments and Waivers by the Majority Lenders**

Subject to Sections 12.2 and 12.3, any consent, approval, (including any approval of or authorization for any amendment to any of the Credit Documents), instruction, decision, determination or other expression of the Lenders under, or any waiver of, or deferral of the requirements or application of, any provision of, any of the Credit Documents will require the consent or approval of the Majority Lenders (or (A) as provided in Section 12.2, BDC alone; or (B) as provided in Section 12.3, all of the Lenders). The consent or approval of the Majority Lenders (or (A) as provided in Section 12.2, BDC alone; or (B) as provided in Section 12.3, all of the Lenders) may be provided or obtained by an instrument in writing signed in one or more counterparts by each of the Majority Lenders (or (A) as provided in Section 12.2, BDC alone; or (B) as provided in Section 12.3, all of the Lenders) (which instrument in writing, for greater certainty, may be delivered by counterpart execution and electronic transmission as provided by Section 13.10).

### **12.2 Actions Requiring Agreement of BDC Alone**

Except as otherwise expressly provided in this Agreement, any decision that relates to (i) any of the actions described in Section 9.2 (including the appointment of a receiver or receiver and manager of, or commencement of any Insolvency Proceeding against, all or any of the Credit Parties) ("**Enforcement Actions**"); and (ii) an amendment to this Agreement or a Credit Document for the purpose of implementing a change provided for pursuant to Section 8.3(d), will only require the consent or approval of BDC alone and the consent or approval of no other Lender will be required. For certainty, each such decision made with the consent of BDC alone (or BDC and some but not all of the other Lenders) will be binding upon all of the Lenders, and the Agent (subject to the provisions for its indemnity contained in this Agreement) will be bound to give effect thereto accordingly. For certainty, the right of BDC alone to make the decisions relating to Enforcement Actions will not include any of the following decisions or actions (which will require the consent or approval of all of the Lenders):

- (a) any increase in the amount of the Term Facility or any decision that would require any Lender to advance additional loans;
- (b) the reduction, forgiveness or subordination of any principal, interest (or rate of interest), or fees under the Term Facility or any other amount owing to all or any of the Secured Parties under the Credit Documents;
- (c) the extension of the Maturity Date or the postponement of the due date for any scheduled payments of interest or fees under this Agreement;
- (d) except to the extent expressly set out in this Agreement, the release of any of the collateral under the Security, the release of any of the Security or the release of any of the guarantors of the Term Facility;
- (e) the postponement of the priority of any of the Security;
- (f) the release, forgiveness of all or any part, or subordination, of any of the claims of the Secured Parties against any Person;
- (g) the amendment or waiver of any Default or Event of Default;
- (h) the approval of any restructuring of the Borrowings whether through an Insolvency Proceeding or otherwise, or the approval of any proposal, plan of arrangement or similar agreement or arrangement relating to or affecting the Borrowings in any Insolvency Proceeding or otherwise; and
- (i) the commencement and continuance of any action or proceeding against any Person other than a Credit Party (except in connection with the enforcement of the rights of the Lenders against the Senior Lenders under the Intercreditor Agreement).

Notwithstanding the foregoing and for certainty, BDC agrees that it will consult with the other Lenders with respect to all Enforcement Actions prior to making each of its decisions in connection therewith and will ensure that the Lenders receive timely information and reporting as to the Enforcement Actions taken.

### **12.3 Amendments and Waivers requiring consent of all Lenders**

An amendment, waiver, consent, approval or decision that relates to any of the following matters will require the consent or approval of each Lender and may be only made or given by an instrument signed by the Lenders and the Agent and, in the case of an amendment, also signed by the Borrower:

- (a) any increase in the amount of the Term Facility or any decision that would require any Lender to advance additional loans;
- (b) the reduction, forgiveness or subordination of any principal, interest (or rate of interest), or fees under the Term Facility or any other amount owing to all or any of the Secured Parties under the Credit Documents;

- (c) the extension of the Maturity Date or the postponement of the due date for any scheduled payments of interest or fees under this Agreement;
- (d) except to the extent expressly set out in this Agreement, the release of any of the collateral under the Security, the release of any of the Security or the release of any of the guarantors of the Term Facility;
- (e) the postponement of the priority of any of the Security;
- (f) any amendment to, or waiver of, any of the provisions of Article 10, Article 11 or Article 12 or any amendment to, or waiver of, any provision that provides for the *pro rata* allocation of advances or liability or *pro rata* sharing of payments among the Lenders; and
- (g) any amendment to the definition of “Majority Commercial Lenders” or “Majority Lenders”.

#### **12.4 Amendments requiring the Consent of the Agent**

No amendment affecting the rights and obligations of the Agent may be made without the consent of the Agent.

#### **12.5 Execution of Consents, etc. by Agent**

For certainty, to the extent authorized by the Majority Lenders (or (A) by all Lenders when the consent or approval of all Lenders is required pursuant to Section 12.3; or (B) by BDC when only the consent or approval of BDC is required pursuant to Section 12.2) as provided by this Article 12, the Agent will be entitled (but not obligated) to execute and deliver on behalf of the Agent and all of the Lenders, without the requirement for the execution by any other Lender or Lenders, any consents, waivers, documents or instruments (including without limitation any amendment to any of the Loan Documents) necessary or advisable in the opinion of the Agent to give effect to the matters approved by the Majority Lenders (or (A) by all Lenders when the consent or approval of all Lenders is required pursuant to Section 12.3; or (B) by BDC when only the consent or approval of BDC is required pursuant to Section 12.2).

### **ARTICLE 13 MISCELLANEOUS**

#### **13.1 Determination**

In the absence of manifest error, any determination made by the Agent of the amounts payable hereunder and any adjustment (and resulting reallocation) of a Borrowing among Lenders will be conclusive and binding upon the Lenders and the Borrower.

#### **13.2 Prohibition on Assignment by the Borrower**

The Borrower may not be replaced and may not assign its rights, or the amounts to be received by it, under this Agreement without the prior written consent of the Lenders.

### **13.3 Assignment by the Lenders**

- (a) None of the Lenders may assign, grant a participation or sub-participation, pledge or grant a security interest or hypothec or in any other way dispose of its interests, rights and obligations under this Agreement or in the Term Facility or any part thereof (any such event being referred to as a “**Transfer**”) without the prior written consent of the other Lenders.
- (b) Notwithstanding Section 13.3(a):
  - (i) BDC may Transfer all or any part of its Commitment or Borrowings to a Wholly-Owned Subsidiary of Her Majesty the Queen in Right of Canada without the consent of the other Lenders, provided that the Wholly-Owned Subsidiary will enter into an agreement with the other parties agreeing to perform the obligations of the transferring party under this Agreement in form and substance satisfactory to the other parties;
  - (ii) Every other Lender may Transfer all or any part of its Commitment or Borrowings to an Affiliate without the consent of the other Lenders, provided that the Affiliate will enter into an agreement with the other parties agreeing to perform the obligations of the transferring party under this Agreement in form and substance satisfactory to the other parties; and
  - (iii) Each transferring party and transferee will forthwith (A) provide written notice to the Agent of the applicable Transfer together with a copy of the agreement effecting such Transfer and such administrative details as may be requested by the Agent, and (B) pay to the Agent a processing and recordation fee of \$[fee redacted] for each Transfer (which fee may be waived or reduced in the Agent’s discretion).

### **13.4 Register**

The Agent will maintain at one of its offices in Calgary, Alberta, Toronto, Ontario or Montréal, Québec a copy of each Transfer delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Borrowings owing to, each Lender pursuant to the terms hereof from time to time (the “**Register**”). The entries in the Register will be conclusive, absent manifest error, and the Borrower, the 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 will be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice. For certainty, the Agent will not be required to maintain a Register for any participations granted by any Lender.

### **13.5 Costs and Expenses**

The Borrower will pay on demand the amount of all reasonable costs and expenses (including legal and other professional fees on a full indemnity basis) incurred by each Secured Party in connection with the Term Facility and the preparation, negotiation, execution and administration of the Credit Documents, as well as the reasonable costs and expenses

(including legal and other professional fees on a full indemnity basis) incurred by each Secured Party in connection with the enforcement of, or the preservation of any rights and remedies under, any Credit Document or Applicable Law (including all costs and expenses incurred in connection with any work-out, restructuring or insolvency proceeding).

### **13.6 Set-off**

In addition to and not in limitation of any rights now or hereafter granted under Applicable Law, at any time an Event of Default has occurred and is subsisting, the Lenders, or any of them, may at any time and from time to time without notice to the Borrower or any other Person, any notice being expressly waived by each of the Credit Parties, set-off and compensate and apply any and all deposits, general or special, time or demand, provisional or final, matured or unmatured, and any other indebtedness at any time owing by any Lender, to or for the credit of or the account of any Credit Party, against and on account of the debts and liabilities of the Borrower under any of the Credit Documents, notwithstanding that any of them are contingent or unmatured.

### **13.7 Yield Protection and Indemnification**

- (a) If subsequent to the Effective Date any change in or introduction of any Applicable Law, or compliance by any Lender with any request or directive by any central bank, superintendent of financial institutions or other comparable authority, will subject such Lender to any tax with respect to the Term Facility or change the basis of taxation of payments to such Lender of any amount payable under the Term Facility (except for changes in the rate of tax on the overall net income of such Lender), or impose any capital maintenance or capital adequacy requirement, reserve requirement or similar requirement with respect to the Term Facility, or impose on such Lender, any other condition or restriction, and the result of any of the foregoing is to increase the cost to such Lender of making or maintaining the Term Facility or any amount thereunder or to reduce any amount otherwise received by such Lender under the Term Facility, such Lender will promptly notify the Borrower of such event and the Borrower will pay to such Lender such additional amount calculated by such Lender as is necessary to compensate it for such additional cost or reduced amount received. A certificate of such Lender as to any such additional amount payable to it and containing reasonable details of the calculation thereof will be conclusive evidence thereof.

Notwithstanding anything contained in this Agreement, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof and (ii) all requests, rules, regulations, guidelines or directives whether concerning capital adequacy or liquidity promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, will, in each case, be deemed a change in Applicable Law regardless of the date enacted, adopted, applied or issued.

- (b) The Borrower hereby indemnifies each Secured Party, their Affiliates and their respective officers, directors, employees and agents (each, an “**Indemnitee**”) and agrees to hold them harmless from and against any and all losses, claims,

damages, liabilities and related expense (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee on a full indemnity basis), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Credit Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Credit 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 or the consummation or non-consummation of the transactions contemplated hereby or thereby, (ii) any Borrowings or the use or proposed use of the proceeds therefrom, (iii) the non-compliance by any Credit Party with any Environmental Laws or of any claim under Environmental Laws in connection with the operations of, or any property owned or operated by, any of the Credit Parties, or (iv) any actual or prospective claim, litigation, investigation 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 a Credit Party and regardless of whether any Indemnitee is a party thereto, provided that such indemnity will not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) 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 (y) result from a claim brought by the Borrower or any other Credit Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Credit Document, if the Credit Party has obtained a final and non-appealable judgment in its favour on such claim as determined by a court of competent jurisdiction.

- (c) The Borrower hereby indemnifies each of the Indemnitees and agrees to hold them harmless from and against all claims, demands, liabilities, damages, losses, costs, charges and expenses, including any loss or expense arising from interest or fees payable by any Indemnitee to lenders of funds obtained by it in order to make or maintain any amount under the Term Facility and any loss or expense incurred in liquidating or re employing deposits from which such funds were obtained, which may be incurred by an Indemnitee as a consequence of (i) default by the Borrower in the payment when due of any amount hereunder or the occurrence of any other default relative to the Term Facility, (ii) default by the Borrower in obtaining any amount after the Borrower has given notice hereunder that it desires to obtain such amount, (iii) default by the Borrower in making any optional repayment of any amount after the Borrower has given notice hereunder that it desires to make such repayment, or (iv) the repayment of any loan on which interest is payable at a fixed annual rate otherwise than on the expiration of the fixed interest rate period applicable thereto, or the repayment of any other amount otherwise than on any specified maturity date thereof. A certificate of an Indemnitee as to any such loss or expense and containing reasonable details of the calculation thereof will be *prima facie* evidence thereof.
- (d) All amounts due under this Section will be payable promptly after demand therefor. A certificate of the Agent or a Lender setting forth the amount or amounts owing to the Agent, Lender or a sub-agent or other Indemnitee, as the case may be, as specified in this Section, including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrower will be conclusive absent manifest error.

- (e) To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under foregoing paragraphs of this Section to be paid by it to the Agent (or any sub-agent thereof), its Affiliates or its officers, directors, employees and agents, each Lender severally agrees to pay to the Agent (or any such sub-agent), such Lender's Pro Rata 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 Agent (or any such sub-agent) its Affiliates or its officers, directors, employees and agents. The obligations of the Lenders under this paragraph are several and not joint or joint and several.
- (f) To the fullest extent permitted by Applicable Law, the Credit Parties will not assert, and hereby waive, 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 Document or any agreement or instrument contemplated hereby (or any breach thereof), the transactions contemplated hereby or thereby, any Borrowings or the use of the proceeds thereof. No Indemnitee will 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 Documents or the transactions contemplated hereby or thereby.

### **13.8 Corrections of Errors**

The Lenders are authorized to correct any typographical error or other error of an editorial nature in this Agreement and to substitute such corrected text in the counterparts of this Agreement, provided that such corrections do not modify the meaning or the interpretation of this Agreement and provided that copies of the corrected texts are remitted to each party.

### **13.9 Confidentiality**

- (a) The Credit Parties and the Secured Parties hereto agree to maintain the confidentiality of the Information (as defined in Section 13.9(b)), except that Information may be disclosed (i) to their Affiliates and their 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), (ii) to the extent requested by any regulatory authority purporting to have jurisdiction over them (including any self-regulatory authority), (iii) to the extent required by Applicable Law or regulations or by any subpoena or similar legal process, (iv) to any other party hereto, (v) in connection with the exercise of any remedies hereunder or under any other Credit Document or any action or proceeding relating to this Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section 13.9(a), to (x) any assignee or any prospective assignee of any of their rights or obligations under this Agreement or (y) 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, (vii) with the consent of the Borrower or the applicable Secured Party (as the case may be) or (viii) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section 13.9(a) or (y) becomes available to any of the Secured Parties on a non-confidential basis from a source other than the Borrower.

- (b) For purposes of Section 13.9(a), “**Information**” means all information related to the Credit Documents and all information received by the Secured Parties in connection with this Agreement from the Borrower or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to any of the Secured Parties on a non-confidential basis prior to such receipt. Any Person required to maintain the confidentiality of Information as provided in Section 13.9(a) will 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.
- (c) Notwithstanding the foregoing, the Lenders may publicize the Term Facility by means of press releases, “tombstone” advertisements, reporting to Bloomberg and other similar agencies or dissemination on its website or other platforms (including third party platforms);

### **13.10 Counterparts; Electronic Execution**

This Agreement and each other Credit Document may be executed in one or more counterparts (and by different parties hereto in different counterparts), each of which will be deemed an original, but all of which together will constitute one and the same instrument. Delivery by electronic transmission of an executed counterpart of a signature page to this Agreement and each other Credit Document will be effective as delivery of an original executed counterpart of this Agreement and such other Credit Document. The words “execution,” “execute,” “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Agreement or any other Credit Document will be deemed to include electronic signatures, or the keeping of records in electronic form, each of which will 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 Applicable Law, including, without limitation, as in provided Parts 2 and 3 of the *Personal Information Protection and Electronic Documents Act* (Canada), the *Electronic Commerce Act, 2000* (Ontario), the *Electronic Transaction Acts* (British Columbia), the *Electronic Transactions Act* (Alberta), *An Act to establish a Legal Framework for Information Technology* (Québec) or any other similar laws based on the Uniform Electronic Commerce Act of the Uniform Law Conference of Canada. The Agent may, in its discretion, require that any such documents and signatures executed electronically or delivered by electronic transmission be confirmed by a manually-signed original thereof; provided that the failure to request or deliver the same will not limit the effectiveness of any document or signature executed electronically or delivered by electronic transmission.

## **ARTICLE 14 NOTICES**

### **14.1 Sending of Notices**

Unless otherwise provided, any notice to be given to a party in connection with this Agreement will be given in writing and will be given by personal delivery, by a reputable delivery service, or by electronic mail or other form of electronic transmission, addressed to the recipient at its address specified in Schedule "D" hereof or at such other address as may be notified by such party to the others pursuant to this Article 14.

### **14.2 Receipt of Notices**

Any notice given by personal delivery or by a delivery service will be conclusively deemed to have been given at the time of such delivery if delivered prior to 3:00 p.m. on a Business Day (otherwise on the following Business Day) and, if given by electronic mail or other form of electronic transmission, on the day of transmittal if before 3:00 p.m. on a Business Day (otherwise on the following Business Day). If the electronic transmission system suffers any interruptions by way of a strike, slow-down, a *force majeure*, or any other cause, a party giving a notice must do so using another means of communication not affected by the disruption.

***Signature Page Follows***

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

**INPLAY OIL CORP.**, as Borrower

Per:  ("Signed")

**ATB FINANCIAL**, as Agent

Per:  ("Signed")

Per:  ("Signed")

**BUSINESS DEVELOPMENT BANK OF CANADA, as  
Lender**

Per:  ("Signed")

Per:  ("Signed")

**ATB FINANCIAL, as Lender**

Per:  ("Signed")

Per:  ("Signed")

**NATIONAL BANK OF CANADA, as Lender**

Per:  ("Signed")

Per:  ("Signed")

**SCHEDULE "A"**  
**TABLE OF COMMITMENTS**

<b>Lender</b>	<b>Term Facility</b>	<b>% of Commitments</b>
Business Development Bank of Canada	[redacted]	[redacted]
ATB Financial	[redacted]	[redacted]
National Bank of Canada	[redacted]	[redacted]
Total	\$25,000,000	100%

**SCHEDULE "B"**  
**COMPLIANCE CERTIFICATE**

TO: ATB Financial, in its capacity as agent of the Lenders  
(the "**Agent**")

AND TO: Each of the Lenders

1. Reference is made to the credit agreement dated as of October 30, 2020 between InPlay Oil Corp., as Borrower, ATB Financial, Business Development Bank of Canada, and the other Persons party thereto in their capacity as Lenders and the Agent and relating to the establishment of a credit facility in favour of the Borrower (as the same may be further amended, modified, supplemented or restated, the "**Credit Agreement**"). Capitalized terms used herein, and not otherwise defined herein, shall have the meanings attributed to such terms in the Credit Agreement.
2. This Compliance Certificate is delivered to the Agent pursuant to Section **[8.1(b) OR 8.3(b)(ii)(C)]** of the Credit Agreement.
3. The undersigned, **[name]**, **[title; must be one of the executive chairman, president, chief executive officer, chief operating officer, chief financial officer, a vice president or treasurer]** of the Borrower, hereby certifies that, as of the date of this Compliance Certificate, I have made or caused to be made such investigations as are necessary or appropriate for the purposes of this Compliance Certificate and:
  - (a) **[the [unaudited OR audited] consolidated financial statements for the [Fiscal Quarter OR Fiscal Year] ending ●,● provided to the Agent pursuant to Section 10.1(e)[(iii) OR (iv)] of the Senior Credit Agreement, as incorporated by reference into the Credit Agreement pursuant to Section 8.1(a) of the Credit Agreement, were prepared in accordance with GAAP and present fairly, in all material respects, the consolidated financial position of the Borrower and its Subsidiaries as at the date thereof;]**<sup>1</sup>
  - (b) **[the unaudited consolidated balance sheet and the related consolidated statements of income and cash flows of the Borrower for the period from the beginning of the current Fiscal Year to the calendar month ending ●,● provided to the Agent pursuant to Section 8.3(b)(ii)(A) of the Credit Agreement, were prepared in accordance with GAAP and present fairly, in all material respects, the consolidated financial position of the Borrower and its Subsidiaries as at the date thereof;]**<sup>2</sup>
  - (c) the representations and warranties made by the Borrower in Sections 8.1 and 8.2 of the Credit Agreement (including, for certainty, the representations and warranties set forth in the Senior Credit Agreement and incorporated into the Credit Agreement by reference) are true and accurate in all respects as at the

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<sup>1</sup> Certified only in respect of Compliance Certificates delivered pursuant to 8.1(b)

<sup>2</sup> Certified only in respect of Compliance Certificates delivered pursuant to 8.3(ii)(C)

date hereof, except as has heretofore been notified to the Agent by the Borrower in writing **[or except as described in Schedule \_\_\_\_\_ hereto]**;

- (c) no event, circumstance or condition has occurred or is continuing which would constitute a Default or Event of Default (including for certainty any "Default" or "Event of Default" under the Senior Credit Agreement), except as has heretofore been notified to the Agent by the Borrower in writing in accordance with Section 8.3(b)(iii) of the Credit Agreement **[or except as described in Schedule \_\_\_\_\_ hereto]**;
- (d) [since the last Borrowing Base determination or redetermination under the Senior Credit Agreement, the aggregate net proceeds of all dispositions by the Borrower Parties made in reliance on paragraphs (e) and (g) of the definition of Permitted Disposition in the Senior Credit Agreement are \$\_\_\_\_\_ and \$\_\_\_\_\_, respectively;]<sup>3</sup>
- (e) the LMR of the Borrower and each Subsidiary that has an LMR is as follows:

Borrower and applicable Subsidiaries	Material Jurisdiction(s)	LMR
InPlay Oil Corp.	Alberta  <b>[Include other Material Jurisdictions, as applicable.]</b>	•  •
<b>[Include Subsidiaries, as applicable.]</b>	<b>[Include Material Jurisdictions, as applicable.]</b>	•

I give this Compliance Certificate on behalf of the Borrower and in my capacity as the • **[insert title]** of the Borrower, and no personal liability is created against or assumed by me in the giving of this Certificate.

Dated at •, this • day of •, •.

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

Title:

<sup>3</sup> Certified only in respect of Compliance Certificates delivered pursuant to 8.1(b)

**SCHEDULE "C"**  
**NOTICE OF BORROWING**

**[Date]**

**ATB FINANCIAL**

Suite 600, 585-8th Avenue S.W.  
Calgary, Alberta T2P 1G1

Attention: [●]  
Email : [●]

**RE: Credit Agreement dated as of [●], 2020**

Sirs/Mesdames:

Reference is made to the above-mentioned Credit Agreement entered into between, *inter alia*, the undersigned and the Lenders mentioned therein.

We confirm our request for a Borrowing to be made on [date], the details of which are as follows:

- Amount: \$● (which must be a multiple of \$100,000 with a minimum of \$2,500,000);
- Date of Borrowing:

We attach:

- (a) an updated 13-Week Cash Flow showing the liquidity requirements for the next 13-week period following the date of Borrowing and confirm that such liquidity (in addition to the proceeds from the Borrowing) will be sufficient to meet the liquidity requirements of the Borrower for such period;
- (b) if not already delivered pursuant to Section 8.3(b)(ii)(A), the financial statements for the Borrower on a consolidated basis for the most recently ended month;
- (c) if not already delivered pursuant to Section 8.3(b)(i), an update of the Multi-Year Business Plan as of the end of the most recently ended fiscal quarter of the Borrower;

On the date hereof, we certify that (a) the representations and warranties set forth in the Credit Agreement are still true and correct in all material respects, no Default or Event of Default has occurred and is continuing (nor would arise as a result of such Borrowing), and no "Default" or "Event of Default" (as defined in the Senior Credit Agreement) has occurred and is continuing (nor would arise as a result of such Borrowing) (b) all taxes, assessments and governmental charges or levies imposed on it or on its income or assets have been paid when due (except for any such taxes, assessments, charges or levies that are being diligently disputed by the Borrower in good faith and for which appropriate reserves have been taken in accordance with GAAP); (c) there has been no Material Adverse Change since [the Effective Date/the previous Borrowing date] (nor would arise as a result of such Borrowing) and (d) each of the representations and warranties set forth in Sections 8.1 and 8.2 (including, for certainty, the representations and warranties set forth in the Senior Credit Agreement and incorporated in the

Credit Agreement by reference) are true and correct in all respects as of the date of the requested Borrowing.

INPLAY OIL CORP.

Per: \_\_\_\_\_

Per: \_\_\_\_\_

[Note: This form (adapted accordingly) may also be used for a notice of repayment.]

**SCHEDULE "D"**  
**ADDRESSES FOR NOTICE PURPOSES**

**BUSINESS DEVELOPMENT BANK OF CANADA, as Lender**

5 Place Ville-Marie, Ground Floor,  
Montréal (Québec) H3B 5E7

Attention: [redacted]  
Email: [redacted]

and

Attention: [redacted]  
Email: [redacted]

**ATB FINANCIAL, as Agent**

Suite 600, 585-8th Avenue S.W.  
Calgary, Alberta T2P 1G1

Attention: [redacted]  
Email : [redacted]

**INPLAY OIL CORP., as Borrower**

920, 640 – 5th Avenue SW  
Calgary, Alberta T2P 3G4

Attention: [redacted]  
Email: [redacted]