

**FINNING INTERNATIONAL INC.
AND THOSE OF ITS SUBSIDIARIES FROM TIME TO TIME
PARTY TO THIS AGREEMENT AS BORROWERS**
as Borrowers

- and -

ROYAL BANK OF CANADA
as Administrative Agent

- and -

RBC EUROPE LIMITED
as European Agent

- and -

**THOSE INSTITUTIONS FROM TIME TO TIME
PARTY TO THIS AGREEMENT AS LENDERS**
as Lenders

2017 AMENDED AND RESTATED CREDIT AGREEMENT

RBC CAPITAL MARKETS
Sole Bookrunner

RBC CAPITAL MARKETS, THE BANK OF NOVA SCOTIA AND TD SECURITIES
Co-Lead Arrangers

THE BANK OF NOVA SCOTIA
Syndication Agent

TD SECURITIES
Documentation Agent

Dated for reference October 30, 2017

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ADDENDA

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THIS 2017 AMENDED AND RESTATED CREDIT AGREEMENT is dated for reference October 30, 2017.

AMONG:

**FINNING INTERNATIONAL INC. AND THOSE OF ITS
SUBSIDIARIES FROM TIME TO TIME PARTY TO THIS
AGREEMENT AS BORROWERS**

as Borrowers

OF THE FIRST PART

AND:

ROYAL BANK OF CANADA

as Administrative Agent

OF THE SECOND PART

AND:

RBC EUROPE LIMITED

as European Agent

OF THE THIRD PART

AND:

**THOSE INSTITUTIONS FROM TIME TO TIME PARTY TO THIS
AGREEMENT AS LENDERS**

as Lenders

OF THE FOURTH PART

WHEREAS, pursuant to a credit agreement dated for reference December 6, 2005 (the "**Original Credit Agreement**"), the Lenders (as they then were) agreed to make available the Credit Facility (as it then was) to the Borrowers (as they then were) on the terms and conditions set forth therein;

AND WHEREAS the Original Credit Agreement has been supplemented, amended, and restated on various occasions (such agreement, as so supplemented, amended and restated to date, the "**Existing Credit Agreement**");

AND WHEREAS the parties have agreed to certain further amendments to the Credit Facility, including inter alia to extend the Maturity Date to October 30, 2022, to add Finning

(Ireland) Limited as a Borrower, and to add a mechanism for adding additional Borrowers in the future, and the parties have determined that it is most expedient that such amendments be reflected in this amended and restated credit agreement (this "**Amendment and Restatement**"), which is to become effective on the date upon which the Administrative Agent issues the notice described in section 6.1 confirming that the relevant conditions set out in section 6.1 have been satisfied, fulfilled or otherwise met to the satisfaction of (or waived in writing by) the Lenders (the "**Amendment and Restatement Closing Date**");

NOW THEREFORE, in consideration of the mutual covenants and agreements herein set forth and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Defined Terms. As used in this agreement, including the recitals and the schedules, unless there is something in the subject matter or the context inconsistent therewith, in addition to the definitions set forth in the Provisions, the following terms shall have the following meanings:

- (1) "**Accommodation**" means:
 - (a) an Advance by a Lender made on the occasion of a Borrowing pursuant to an Accommodation Request (whether given or deemed to be given) or otherwise made or deemed to have been made pursuant hereto;
 - (b) the creation of Bankers' Acceptances on the occasion of a Drawing (or the making of a BA Equivalent Advance) pursuant to an Accommodation Request; and
 - (c) the Issuance of a Fronted Letter of Credit by the Issuing Bank on behalf of the Lenders or the Issuance of a POA Letter of Credit by the Lenders on a several basis, on the occasion of an Issuance pursuant to an Accommodation Request;

and includes an Advance and a Bankers' Acceptance resulting from a Rollover or Conversion (whether requested or deemed to have been requested hereunder) or otherwise effected pursuant hereto. Each type of Borrowing and each type of Letter of Credit is a "type" of Accommodation, as are Bankers' Acceptances. When reference is made herein to the Accommodations of a Lender, such reference shall include the interest of such Lender in, and the obligations of such Lender with respect to, Fronted Letters of Credit that are outstanding.

- (2) "**Accommodation Request**" means a notice of request for a Borrowing, a Drawing and/or an Issuance substantially in the form of schedule 2 annexed hereto, or such other form as the Administrative Agent may from time to

time specify, and includes in the case of a Swingline Advance a telephone request made in accordance with section 2.1(6)(a).

- (3) "**Administrative Agent**" means Royal Bank and any successor administrative agent appointed in accordance with Article 11, in its capacity (unless the context otherwise requires) as administrative agent in accordance with such Article.
- (4) "**Advance**" means an advance of monies (other than and excluding Discount Proceeds) made or deemed to have been made by a Lender under the Credit Facility and includes an Advance resulting from a Conversion or Rollover (whether requested or deemed to have been requested hereunder) or otherwise effected pursuant hereto. An Advance may be denominated in US Dollars, Canadian Dollars, Euros or Sterling. An Advance in:
 - (a) Canadian Dollars shall be designated from time to time, as requested or deemed to have been requested by the relevant Borrower, a "**CDOR Rate Advance**" or a "**Prime Rate Advance**";
 - (b) US Dollars shall be designated from time to time, as requested or deemed to have been requested by the relevant Borrower, a "**LIBOR Advance**", a "**Base Rate Advance**" or a "**US Prime Rate Advance**";
 - (c) Euros shall be designated a "**LIBOR Advance**"; and
 - (d) Sterling shall be designated a "**LIBOR Advance**".Each of a CDOR Rate Advance, a Prime Rate Advance, a Base Rate Advance, a US Prime Rate Advance and a LIBOR Advance is a "type" of Advance.
- (5) "**affiliate**" means, with respect to a specified person, another person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person. For this purpose, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ability to exercise voting power, by contract or otherwise, and "**controlling**" and "**controlled**" have corresponding meanings. Notwithstanding the foregoing, neither the Administrative Agent nor the European Agent nor any Lender shall be deemed to be an affiliate of any Borrower or any affiliate thereof solely by reason of its agency function or lending relationship.
- (6) "**Agents**" means, collectively, the Administrative Agent and the European Agent.
- (7) "**Amendment and Restatement**" has the meaning set forth in the recitals hereto.

- (8) "**Amendment and Restatement Closing Date**" has the meaning set forth in the recitals hereto.
- (9) "**AML Legislation**" means the requirements of the Proceeds of Crime (Money Laundering) and *Terrorist Financing Act* (Canada), the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act* (USA) or any other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" Applicable Laws, including any guidelines or orders thereunder.
- (10) "**Applicable Agent**" means:
- (a) the Administrative Agent in the case of Canadian Accommodations and US Accommodations; and
 - (b) the European Agent in the case of European Accommodations.
- (11) "**Applicable Law**" means:
- (a) any domestic or foreign statute, law (including common and civil law), treaty, code, ordinance, rule, regulation, restriction or by-law (zoning or otherwise);
 - (b) any judgement, order, writ, injunction, decision, ruling, decree or award;
 - (c) any regulatory policy, practice, guideline or directive; or
 - (d) any franchise, licence, qualification, authorization, consent, exemption, waiver, right, permit or other approval of any Governmental Authority, binding on or affecting the person referred to in the context in which the term is used or binding on or affecting the property of such person, in each case whether or not having the force of law.
- (12) "**Applicable Margin**" means, in respect of the following types of Accommodation or the unadvanced portion of a Commitment, the following corresponding margins and fees expressed as basis points per annum¹:

Level	Rating	BAs, CDOR Rate, LIBOR & LCs	Prime Rate, Base Rate & US Prime Rate	Standby Fee
I	A/A or higher	[] bps	[] bps	[] bps
II	A-/AL	[] bps	[] bps	[] bps
III	BBB+/BBBH	[] bps	[] bps	[] bps
IV	BBB/BBB	[] bps	[] bps	[] bps
V	BBB-/BBBL or lower	[] bps	[] bps	[] bps

¹ Fee information redacted from chart.

For the purposes of determining the Applicable Margin, the following shall apply:

- (a) If Ratings are provided by both Rating Agencies and are at different levels, then:
 - (i) if one Rating is at a level immediately below the level of the other Rating, the Applicable Margin shall be calculated at the level corresponding to the higher (more creditworthy) of the Ratings; and
 - (ii) if one Rating is at a level that is not immediately below the level of the other Rating, then the Applicable Margin shall be calculated at the average of the margins that would otherwise apply.
 - (b) In the absence of any Rating, Level V shall apply.
 - (c) A change in Applicable Margin necessitated by a change in or absence of a Rating shall have effect as regards Advances then outstanding on the effective day of such change in Rating or the first day of such absence (each, a "**change effective day**"), shall have effect as regards fees to be paid by the Borrowers as referred to in sections 2.6(a) and 5.8(1) on the change effective day, shall have effect as regards fresh Accommodations obtained by the Borrowers on or after the change effective day and shall not affect:
 - (i) the stamping fees for outstanding Bankers' Acceptances; or
 - (ii) the interest on an outstanding CDOR Rate Advance or LIBOR Advance.
- (13) "**Approved Fund**" means any Fund that is administered or managed by:
- (a) a Lender;
 - (b) an affiliate of a Lender; or
 - (c) an entity or an affiliate of an entity that administers or manages a Lender.
- (14) "**Assignment and Assumption**" means an assignment and assumption entered into by a Lender and an Eligible Assignee and accepted by the Administrative Agent, in substantially the form of schedule 4-A annexed hereto or any other form approved by the Administrative Agent.

- (15) "**BA Equivalent Advance**" means, in relation to a Drawing, an advance in Canadian Dollars made to a Borrower by a Non-Acceptance Lender as part of the Drawing in accordance with the provisions of section 4.11.
- (16) "**Bankers' Acceptance**" means a depository bill as defined by the *Depository Bills and Notes Act* (Canada) or a blank non-interest bearing bill of exchange as defined by the *Bills of Exchange Act* (Canada), in either case drawn by a Borrower, denominated in Canadian Dollars and accepted by a Lender as a bankers' acceptance, as evidenced by such Lender's endorsement thereof at the request of such Borrower pursuant to an Accommodation Request and includes a Bankers' Acceptance resulting from a Conversion or Rollover.
- (17) "**Base Rate**" means, at any time, the greater of:
- (a) the rate which the principal office of the Administrative Agent in Toronto, Ontario announces from time to time as its "base rate" and which is its reference rate of interest for loans in US Dollars to its Canadian borrowers; and
 - (b) the sum of:
 - (i) the Federal Funds Effective Rate multiplied by 365 (or 366 in the case of a leap year) and divided by 360; plus
 - (ii) []² basis points per annum;
- as to which a certificate of the Administrative Agent, absent manifest error, shall be conclusive evidence from time to time. With each quoted or published change in such rate aforesaid of the Administrative Agent there shall be a corresponding change in the rate of interest payable under this agreement, should such changed rate exceed that set forth in paragraph (b) of this definition, all without the necessity of any notice thereof to the Borrowers or any other person.
- (18) "**Base Rate Advance**" means an Advance designated from time to time, as requested or deemed to have been requested by the relevant Borrower, a Base Rate Advance.
- (19) "**basis point**", "**bp**" and "**b.p.**" each mean one one-hundredth (1/100) of one per cent, or .01%.
- (20) "**Beneficiary**" means, in respect of any Letter of Credit, the beneficiary specified therein.

² Fee information redacted.

- (21) "**Borrowers**" means, collectively, the Canadian Borrowers, the US Borrowers and the European Borrowers, and "Borrower" means any one of the said persons.
- (22) "**Borrowers' Counsel**" means Borden Ladner Gervais LLP or such other law firm or firms as may from time to time be chosen by the Borrowers to act on their behalf in connection with the Credit Facility.
- (23) "**Borrowing**" means a borrowing consisting of one or more Advances.
- (24) "**Business Day**" means any day other than:
- (a) a Saturday, Sunday or other day on which commercial banks in Toronto are required to be closed;
 - (b) with respect to dealings in US Dollars, a day on which commercial banks in New York, New York are required to be closed; and
 - (c) with respect to the making of LIBOR Advances denominated in Euros or Sterling, a day on which commercial banks in London, England are required to be closed.
- (25) "**Canadian Accommodation**" means an Accommodation in favour of any Canadian Borrower.
- (26) "**Calculation Date**" means each of the Amendment and Restatement Closing Date and the last day of each Financial Quarter.
- (27) "**Canadian Benefit Plans**" means all material employee benefit plans or arrangements maintained or contributed to by any Borrower or Restricted Subsidiary (including Canadian Pension Plans), including all profit sharing, savings, supplemental retirement, retiring allowance, severance, pension, deferred compensation, welfare, bonus, incentive compensation, phantom stock, legal services, supplementary unemployment benefit plans or arrangements and all life, health, dental and disability plans and arrangements in which the employees or former employees of any Borrower or Restricted Subsidiary participate or are eligible to participate but excluding all stock option or stock purchase plans.
- (28) "**Canadian Borrowers**" means, collectively and unless and until such person is removed in accordance with section 2.1(10), Finning, Finning Argentina S.A., Finning Soluciones Mineras S.A., and (as of the relevant future date) any other person from time to time added as a Canadian Borrower in accordance with section 2.1(11), and "**Canadian Borrower**" means any one of the said persons.
- (29) "**Canadian Dollar Equivalent Principal Outstanding**" means, at any time, the amount equal to:

- (a) when used in a context pertaining to Accommodations made by a single Lender, the Principal Outstanding in favour of such Lender; and
- (b) when used elsewhere in this agreement with reference to the Credit Facility as a whole, the Principal Outstanding in favour of all Lenders;

in each case calculated and expressed in Canadian Dollars, with each US Dollar, Euro or Sterling obligation converted for purposes of such calculation into the Equivalent Amount in Canadian Dollars.

- (30) "**Canadian Dollars**", "**Cdn. Dollars**", "**Cdn. \$**", "**C\$**" and "**\$**" each mean lawful money of Canada.
- (31) "**Canadian Lenders**" means the institutions from time to time party to this agreement and designated as "**Canadian Lenders**" on the signature pages hereto and their respective successors and permitted assigns, and "**Canadian Lender**" means any one of them.
- (32) "**Canadian Lending Office**" means, as to each Canadian Lender, the office in Canada specified as the "**Canadian Lending Office**" of such Lender on schedule 1 annexed hereto or such other office in Canada as may be designated by such Lender by written notice to the Administrative Agent and Finning.
- (33) "**Canadian Pension Plans**" means all plans or arrangements which are considered to be pension plans for the purposes of any applicable pension benefits standards statute or regulation in Canada established, maintained or contributed to by a Borrower or Restricted Subsidiary for its employees or former employees.
- (34) "**Capital Lease**" means a lease of (or other agreement conveying the right to use) real and/or personal property, which lease is required to be classified and accounted for as a capital lease on a "statement of financial position" of the lessee under GAAP.
- (35) "**Capital Lease Obligations**" means, as to any person, the obligations of such person to pay rent or other amounts under a Capital Lease and, for purposes of this agreement, the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.
- (36) "**Cash Equivalents**" means:
 - (a) marketable, direct obligations of the United States of America, of Canada or of any political agency or subdivision thereof maturing within 365 days of the date of purchase;

- (b) commercial paper maturing within 180 days from the date of purchase thereof, and rated:
 - (i) in the United States "P-2" or better by Moody's or "A-2" or better by S&P; or
 - (ii) in Canada "A-1 low" or better by S&P or "R-1 low" or better by DBRS; or
 - (iii) in any of the foregoing cases the equivalent thereof by any other recognized rating agency; and
 - (c) certificates of deposit maturing within 365 days of the date of purchase issued by or acceptances accepted or guaranteed by a bank to which the *Bank Act* (Canada) applies having at the time of acquisition a combined capital, surplus or undistributed profits of at least C\$2 billion.
- (37) "**CDOR Rate**" means, on any day, the annual rate of discount determined by the Administrative Agent which is equal to the simple average of the yield rates per annum (calculated on the basis of a year of 365 days and calculated to two decimal places with .005 or more being rounded upward) applicable to bankers' acceptances denominated in Canadian Dollars having, where applicable, comparable issue dates and maturity dates as the Bankers' Acceptances proposed to be issued by a Borrower (or the CDOR Rate Advances proposed to be drawn by the Borrower) displayed and identified as such on the "CDOR Page" (or any display substituted therefor) of Reuters Monitor Money Rates Service at approximately 10:00 a.m. (Local Time) on that day or, if that day is not a Business Day, then on the immediately preceding Business Day (as adjusted by the Administrative Agent after 10:00 a.m. (Local Time) to reflect any error in the posted average annual rate of discount); provided, however, if those rates do not appear on the CDOR Page (or the display substituted therefor), then the CDOR Rate shall be the annual rate of discount determined by the Administrative Agent which is equal to the simple average of the yield rates per annum (calculated on the basis of a year of 365 days and calculated to two decimal places with .005 or more being rounded upward) applicable to those bankers' acceptances in a comparable amount to the Bankers' Acceptances proposed to be issued by such Borrower (or the CDOR Rate Advances proposed to be drawn by such Borrower), quoted by three of the five largest (as to total assets) Schedule I Banks (as selected by the Administrative Agent) as of 10:00 a.m. (Local Time) on that day or, if that day is not a Business Day, on the immediately preceding Business Day. Each determination of the CDOR Rate by the Administrative Agent shall be conclusive and binding, absent demonstrated error.

- (38) "**CDOR Rate Advance**" means an Advance designated from time to time, as requested or deemed to have been requested by the relevant Borrower, a CDOR Rate Advance.
- (39) "**CDOR Rate Advance (Can)**" means each CDOR Rate Advance, denominated in Canadian Dollars, which is funded by the Canadian Lending Office of each Lender.
- (40) "**CDOR Rate Advance (Europe)**" means each CDOR Rate Advance, denominated in Canadian Dollars, which is funded by the European Lending Office of each Related European Lender.
- (41) "**CDOR Rate Advance (US)**" means each CDOR Rate Advance, denominated in Canadian Dollars, which is funded by the US Lending Office of each Related US Lender.
- (42) "**Change of Control**" means the acquisition by any person or combination of persons acting jointly or in concert of shares of Finning entitling the holders of such shares to cast more than 50% of the votes carried by all shares of Finning having the right to vote (not dependent on any contingency) for the election of directors of Finning.
- (43) "**Change in Law**" means the occurrence, after the date of this agreement, of any of the following:
- (a) the adoption or taking effect of any Applicable Law;
 - (b) any change in any Applicable Law or in the administration, interpretation or application thereof by any Governmental Authority;
or
 - (c) the issuance of any rule, guideline or directive (whether or not having the force of law) of any Governmental Authority;

provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all rules, guidelines or directives thereunder, issued in connection therewith or in implementation thereof, and (ii) all rules, guidelines and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or Canadian or foreign regulatory authorities, shall in each case be deemed to be a "**Change in Law**", regardless of the date enacted, adopted, issued or implemented.

- (44) "**Charter Documents**" means, in respect of any person, the certificate and articles of incorporation or similar formation documents, by-laws, unanimous shareholders agreement and other organizational or governing documents of such person.

- (45) "**Commitment**" means, for a Lender in respect of the Credit Facility, the amount set forth (including the Swingline Commitment, if applicable) opposite such Lender's name under the heading "Commitment" on schedule 1 annexed hereto, or for such Lender in any applicable assignment pursuant to which such Lender becomes party hereto or acquires any interests hereunder, in each case to the extent not permanently reduced, cancelled or terminated pursuant to this agreement.
- (46) "**Compliance Certificate**" means a certificate of a Senior Financial Officer pursuant to section 6.1(8) or 8.1(14)(d) substantially in the form of schedule 5 annexed hereto.
- (47) "**Concentration Account**" means, as the context requires, the relevant account set forth in part 2 of schedule 11 annexed hereto, or such other places or accounts as may be agreed by the Swingline Lender and Finning from time to time.
- (48) "**Consolidated Shareholders' Equity**" means, as of the date of any determination thereof, the consolidated shareholders' equity of Finning, determined in accordance with GAAP.
- (49) "**Consolidated Total Assets**" means, as of the date of any determination thereof, the consolidated total assets of Finning, determined in accordance with GAAP.
- (50) "**Conversion**" means, in respect of any Drawing or type of Borrowing, the conversion of the method for calculating interest, discount rates or fees thereon from one method to another in accordance with section 2.10, and includes a conversion from a Prime Rate Advance to a CDOR Rate Advance or a Drawing, and vice-versa, and a conversion from a LIBOR Advance denominated in US Dollars to a Base Rate Advance or a US Prime Rate Advance, and vice-versa. In addition, the repayment in full by a Borrower of the Principal Outstanding under an Accommodation in one currency and the concurrent making of an Accommodation in another currency, whereby the aggregate Canadian Dollar Equivalent Principal Outstanding remains the same before and after such transactions, shall also be considered to be a Conversion for all purposes of this agreement.
- (51) "**Credit Facility**" means the revolving term credit facility to be provided by the Lenders to the Borrowers as contemplated by Article 2.
- (52) "**Credit Facility Documents**" means this agreement, Bankers' Acceptances, Letters of Credit, the Facility Guarantees and all other documents from time to time necessary to implement the financing comprised in the Credit Facility, including this Amendment and Restatement and any joinder agreement from time to time.

- (53) "**DBRS**" means Dominion Bond Rating Service Limited and, if such person shall at any time cease to provide Ratings in respect of companies of the nature of Finning, means any other company or organization designated by Finning that is acceptable to the Lenders, acting reasonably, which shall provide a Rating of the long-term corporate credit and/or long-term unsecured debt of Finning on a basis consistent with and using the same nomenclature as Dominion Bond Rating Service Limited or that is otherwise acceptable to the Lenders, acting reasonably.
- (54) "**Default**" means any event or condition that constitutes an Event of Default or that would constitute an Event of Default except for satisfaction of any condition subsequent required to make the event or condition an Event of Default, including giving of any notice, passage of time, or both.
- (55) "**Discount Proceeds**" means, in respect of Bankers' Acceptances to be purchased by a Lender, the result (rounded to the nearest whole cent, with one-half of one cent being rounded up) obtained by multiplying the aggregate Face Amount of such Bankers' Acceptances by a price (rounded up or down to the fifth decimal place, with .000005 or more being rounded up) determined by dividing one by the sum of one plus the product of (x) the applicable Discount Rate multiplied by (y) a fraction, the numerator of which is the number of days in the term to maturity of such Bankers' Acceptances and the denominator of which is 365.
- (56) "**Discount Rate**" means:
- (a) with respect to an issue of Bankers' Acceptances accepted by a Lender that is a Schedule I Bank, the CDOR Rate; and
 - (b) with respect to an issue of Bankers' Acceptances accepted by a Lender that is not a Schedule I Bank, the lesser of:
 - (i) the CDOR Rate plus []³; and
 - (ii) the annual rate, expressed as a percentage, determined by the Administrative Agent as the average discount rate for bankers' acceptances having a comparable face value in Canadian Dollars and a comparable issue and maturity date to the face value and issue and maturity date of that issue of Bankers' Acceptances calculated on the basis of a year of 365 days accepted by the Reference Lenders at or about 10:00 a.m. (Local Time) on the date of issue of those Bankers' Acceptances.
- (57) "**Drawing**" means the creation or making of one or more Bankers' Acceptances in pursuance of an Accommodation Request.

³ Fee information redacted.

- (58) "**Drawing Date**" means any Business Day fixed in accordance with the provisions of this agreement for a Drawing.
- (59) "**Eligible Assignee**" means any financial institution (including a Fund, but excluding any Obligor or any affiliate of an Obligor), in respect of which any consent that is required by section 12.8 has been obtained.
- (60) "**Environmental Laws**" means any Applicable Law relating, in whole or in part, to the protection or enhancement of the environment or imposing liability as a result of adverse effects to the environment, including occupational safety, product liability, public health and public safety.
- (61) "**Environmental Liability**" means any losses, damages, costs, expenses and claims paid, suffered, incurred or to which a person may become subject under any applicable Environmental Laws;
- (62) "**Equivalent Amount**" of a currency means, as at any date, the amount of that currency into which a specified amount of another currency can be converted, and:
- (a) in the case of converting US Dollar amounts to Canadian Dollar amounts, the US Dollar Exchange Rate; and
 - (b) in the case of converting Euro amounts or Sterling amounts to Canadian Dollar amounts, the European Exchange Rate;
- (or if such rates are not available, such other rates as the Administrative Agent may determine acting reasonably).
- (63) "**Euro**" and the symbol "€" mean a euro unit as defined in the European Council Regulation on the legal framework for the introduction of the euro.
- (64) "**European Accommodation**" means an Accommodation in favour of any European Borrower.
- (65) "**European Agent**" means RBC EL and any successor agent appointed in accordance with Article 11, in its capacity (unless the context otherwise requires) as European agent in accordance with such Article.
- (66) "**European Borrowers**" means, collectively and unless and until such person is removed in accordance with section 2.1(10), Finning (UK) Ltd. and (as of October 30, 2017) Finning (Ireland) Limited and (as of the relevant future date) any other person from time to time added as a European Borrower in accordance with section 2.1(11) (and, prior to May 4, 2010, had included Hewden Stuart Plc), and "European Borrower" means any one of the said persons.

- (67) "**European Exchange Rate**" means, on a particular date, in relation to the conversion of Euros or Sterling into Canadian Dollars, the spot rate of exchange for such conversion as quoted by the Bank of Canada at the close of business on the Business Day that such conversion is to be made (or, if such conversion is to be made before close of business on such Business Day, then at approximately close of business on the immediately preceding Business Day), and, in either case, if no such rate is quoted, the spot rate of exchange quoted for wholesale transactions by the European Agent on the Business Day such conversion is to be made in accordance with its normal practice.
- (68) "**European Lending Office**" means as, to each Related European Lender:
- (a) the office specified as the "European Lending Office" of such Lender on schedule 1 annexed hereto;
 - (b) such other office in the European Union as may be designated by such Lender by written notice to the Agents and Finning; or
 - (c) such other office as may be designated by such Lender by written notice to, and agreed to by, the Agents and Finning in Finning's sole discretion.
- (69) "**Event of Default**" means any of the events specified in section 10.1.
- (70) "**Excluded Taxes**" means, with respect to either Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of an Obligor hereunder:
- (a) taxes imposed on or measured by its net income, and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located; and
 - (b) any branch profits taxes or any similar tax imposed by any jurisdiction in which the Lender is located.

Notwithstanding anything to the contrary contained in this definition, "**Excluded Taxes**" shall not include any withholding tax imposed at any time on payments made by or on behalf of a Borrower to any Lender hereunder or under any Credit Facility Document.

- (71) "**Existing Credit Agreement**" has the meaning set forth in the recitals hereto.
- (72) "**Face Amount**" means, in respect of a Bankers' Acceptance, the amount payable to the holder thereof on its maturity and, in respect of a Letter of Credit, the maximum amount that may from time to time be payable to the Beneficiary thereof, and where used in a context referring to more than one

Bankers' Acceptance and/or Letter of Credit means the aggregate of the Face Amounts thereof.

- (73) "**Facility Guarantees**" means, collectively, the Finning Guarantee, the FICSA Guarantee and any other guarantee from time to time of the Obligations provided to the Administrative Agent.
- (74) "**FATCA**" means sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Amendment and Restatement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code.
- (75) "**Federal Funds Effective Rate**" means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the annual rates of interest on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day on such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.
- (76) "**FICSA**" means Finning Chile S.A.
- (77) "**FICSA Guarantee**" means the guarantees made by FICSA from time to time in favour of the Administrative Agent of the Obligations of those of the other Borrowers as from time to time are incorporated or formed under the laws of any South American country or any political subdivision thereof, including without limitation an amended and restated guarantee dated for reference the Amendment and Restatement Closing Date.
- (78) "**Financial Quarter**" means a period of three consecutive months ending on and including March 31, June 30, September 30 or December 31, as the case may be.
- (79) "**Financial Year**" means a financial year commencing on January 1 of each calendar year and ending on and including December 31 of such year.
- (80) "**Finning**" means Finning International Inc.
- (81) "**Finning Barbados Entities**" means, collectively, Finning Tractor Finance No. 1 Limited, Finning Tractor Finance No. 2 Limited and Finning Tractor Finance No. 3 Limited.
- (82) "**Finning Guarantee**" means the guarantees of the Obligations of the other Borrowers made by Finning from time to time in favour of the

Administrative Agent, including without limitation an amended and restated guarantee dated for reference the Amendment and Restatement Closing Date.

- (83) "**Foreign Lender**" means, in respect of a Borrower, any Lender that is not organized under the laws of the jurisdiction in which such Borrower is resident for tax purposes and that is not otherwise considered or deemed in respect of any amount payable to it hereunder or under any Credit Facility Document to be resident for income tax or withholding tax purposes in the jurisdiction in which such Borrower is resident for tax purposes by application of the laws of that jurisdiction. For purposes of this definition, Canada and each Province and Territory thereof shall be deemed to constitute a single jurisdiction, and the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.
- (84) "**Fronted Letter of Credit**" has the meaning set forth in section 5.1.
- (85) "**Fund**" means any person (other than an individual) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.
- (86) "**GAAP**" means:
- (a) in relation to Finning at any time, the accounting principles generally accepted in Canada as recommended in the handbook of the Canadian Institute of Chartered Accountants or its successor for publicly accountable enterprises, including International Financial Reporting Standards or "**IFRS**" and its interpretations adopted by the International Accounting Standards Board, applied on a basis consistent with the most recent audited financial statements of Finning and, if applicable, its consolidated subsidiaries (except for changes approved by the auditors of Finning); and
 - (b) in relation to any other Borrower at any time, either:
 - (i) IFRS; or
 - (ii) generally accepted accounting principles of local application, applied on a basis consistent with the most recent audited financial statements of such Borrower and, if applicable, its consolidated subsidiaries (except for changes approved by the auditors of such Borrower).
- (87) "**Governmental Approval**" means any franchise, licence, qualification, authorization, consent, exemption, waiver, right, permit or other approval of any Governmental Authority, binding on or affecting the person referred to

in the context in which the term is used or binding on or affecting the property of such person, in each case whether or not having the force of law.

- (88) "**Group Companies**" means, collectively, the subsidiaries of Finning, and "**Group Company**" means any one of the said persons.
- (89) "**Governmental Authority**" means the government of Canada or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any supra-national bodies such as the European Union or the European Central Bank and including a Minister of the Crown, Superintendent of Financial Institutions or other comparable authority or agency.
- (90) "**Hazardous Materials**" means:
- (a) any oil, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, contaminates, materials or pollutants which:
 - (i) pose a hazard to any real property, or to persons on or about any real property; or
 - (ii) cause any real property to be in violation of any Applicable Law;
 - (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of limits prescribed by Applicable Law, or radon gas;
 - (c) any chemical, material or substance defined as or included in the definition of "dangerous goods", "deleterious substance", "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous wastes", "restricted hazardous waste", "special waste" or "toxic substances", "waste" or words of similar import under any Applicable Law; and
 - (d) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority or which may or could pose a hazard to the occupants of any real property or the owners or occupants of property adjacent to or surrounding any real property, or any other person coming upon any real property or adjacent or surrounding property;

- (91) "**Hedge Instrument**" means any interest rate, foreign exchange, commodity or securities risk management agreement or product, including:
- (a) interest rate or currency exchange or swap agreements;
 - (b) futures contracts;
 - (c) forward exchange, purchase or sale agreements; and
 - (d) any other agreements to fix or hedge interest rates, foreign exchange rates, commodity prices or securities prices.
- (92) "**Hedging Obligations**" means, with respect to any person, payment or delivery obligations under Hedge Instruments.
- (93) "**IFRS**" has the meaning set forth in the definition of "GAAP" in section 1.1.
- (94) "**Increased Costs**" means any amounts payable by a Borrower to either Agent or a Lender under any of section 8.1(16), Article 9 and sections 12.4 and 12.5.
- (95) "**Indebtedness**" means, with respect to any person at any date, without duplication:
- (a) all obligations for borrowed money of such person, including obligations in respect of bankers' acceptances;
 - (b) all Purchase Money Obligations of such person;
 - (c) all Capital Lease Obligations of such person;
 - (d) the face amount of all outstanding letters of credit issued for the account of such person (other than letters of credit relating to obligations included in Indebtedness of such person pursuant to another clause of this definition) and, without duplication, the unreimbursed amount of all drawings thereunder;
 - (e) indebtedness secured by any Lien on property or assets of such person, whether or not assumed (but in any event not exceeding the fair market value of the property or asset);
 - (f) all termination liabilities of such person under Hedge Instruments (excluding cross-currency interest rate swaps, and forward foreign exchange contracts, designated as Net Investment Hedges) with an original term to maturity exceeding six months, determined on a net mark-to-market basis as if such Hedge Instruments were terminated on such date; provided that if the net mark-to-market position reflects an amount receivable by such person (rather than an amount payable) the amount receivable will not reduce other Indebtedness;

- (g) the redemption obligations of such person in respect of Puttable Securities; and
- (h) any guarantee by such person of any obligation set forth in (a) through (g) above of Indebtedness of any other person;

but in any event excluding:

- (i) trade payables incurred in the ordinary course of business not more than 90 days overdue; and
 - (j) obligations owing under operating leases (as determined in accordance with GAAP as of the date of this Amendment and Restatement).
- (96) "**Indemnified Taxes**" means Taxes other than Excluded Taxes.
- (97) "**Interest Period**" means, for each CDOR Rate Advance or LIBOR Advance, a period commencing:
- (a) in the case of the initial Interest Period for such Advance, on the date of such Advance; and
 - (b) in the case of any subsequent Interest Period for such Advance in accordance with a Rollover, on the last day of the immediately preceding Interest Period;

and ending in either case on the last day of such period as shall be selected by the relevant Borrower pursuant to the provisions below.

If a Base Rate Advance or a US Prime Rate Advance is converted to a LIBOR Advance denominated in US Dollars, the initial Interest Period for such LIBOR Advance shall commence on the date of such Conversion. The duration of each Interest Period for a CDOR Rate Advance or LIBOR Advance shall be one week (in the case of LIBOR Advances only) or one, two, three, six or 12 months (subject to availability), as the relevant Borrower may select in the applicable Accommodation Request, or such other period to which the Lenders may agree. No Interest Period may be selected which would end on a day after the Maturity Date, nor on any date that would, in the opinion of the Administrative Agent, conflict with any repayment stipulated herein. Whenever the last day of an Interest Period would otherwise occur on a day other than a Business Day, the last day of such Interest Period shall be extended to occur on the next succeeding Business Day; provided that, if such extension would cause the last day of such Interest Period to occur in the next following calendar month, the last day of such Interest Period shall occur on the next preceding Business Day.

- (98) "**ISP98**" means the International Standby Practices ISP98, as published by the International Chamber of Commerce and in effect from time to time.
- (99) "**Issuance**" means the issuance of one or more Letters of Credit made pursuant to an Accommodation Request, and includes the issuance of an amendment in respect of any such Letter of Credit which increases the Face Amount thereof or extends the expiry date thereunder.
- (100) "**Issue Date**" means any Business Day fixed in accordance with the provisions of this agreement for an Issuance.
- (101) "**Issuing Bank**" means the issuer of Letters of Credit on the basis that it is "fronting" for other Lenders and not on the basis that it is the attorney of other Lenders to sign Letters of Credit on their behalf, or any successor issuer of Letters of Credit, and for this purpose shall be:
- (a) Royal Bank in respect of Letters of Credit issued for the account of any Canadian Borrower;
 - (b) the Related US Lender of Royal Bank in respect of Letters of Credit issued for the account of any US Borrower; and
 - (c) the Related European Lender of Royal Bank in respect of Letters of Credit issued for the account of any European Borrower.

in each case as the Applicable Agent, the relevant Borrower and Royal Bank may agree from time to time. For greater certainty, where the context requires, references to "Lenders" in this agreement include the Issuing Bank.

- (102) "**LC issuer**" has the meaning set forth in section 5.1.
- (103) "**Lender Group**" means, in respect of a Canadian Lender, such Canadian Lender, its Related US Lender and its Related European Lender.
- (104) "**Lenders**" means, collectively, the Canadian Lenders and their respective Related US Lenders and Related European Lenders. Unless the context otherwise requires, each reference in this agreement to any "Lender" shall be deemed to be a reference to:
- (a) a Canadian Lender (in the case of matters relating to Canadian Accommodations);
 - (b) a Related US Lender (in the case of matters relating to US Accommodations); or
 - (c) a Related European Lender (in the case of matters relating to European Accommodations).

- (105) "**Lending Office**" means, with respect to a Lender, its Canadian Lending Office, European Lending Office or US Lending Office, as the case may be.
- (106) "**Lenders' Counsel**" means Stikeman Elliott LLP or such other law firm or firms as may from time to time be chosen by the Lenders to act on their behalf in connection with the Credit Facility.
- (107) "**Letter of Credit**" means a standby or commercial letter of credit or a letter of guarantee for a specified amount in Canadian Dollars, US Dollars, Euros or Sterling (or such other currency as shall be agreed by the Lenders) issued on behalf of the Lenders at the request and upon the indemnity of a Borrower pursuant to Article 5 and (subject to section 5.5(b)) having a term to maturity from the date of issuance thereof of no more than 365 days.
- (108) "**LIBOR**" means, for any Interest Period with respect to a LIBOR Advance, the rate per annum determined by the Administrative Agent at approximately 11:00 a.m. (London time), on the date that is two Business Days prior to the commencement of such Interest Period by reference to the rate set by ICE Benchmark Administration for deposits in US Dollars, Euros or Sterling (as set forth by any service selected by the Administrative Agent that has been nominated by ICE Benchmark Administration as an authorized information vendor for the purpose of displaying such rates) for a period equal to such Interest Period; provided, however, that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, "LIBOR" shall be the interest rate per annum determined by the Administrative Agent to be the average of the rates per annum at which deposits in US Dollars are offered for such relevant Interest Period to major banks in the London interbank market in London, England by the Administrative Agent at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the commencement of such Interest Period; and further provided, that, if such rate is below zero, then "LIBOR" will be deemed to be zero for purposes of this Agreement.
- (109) "**LIBOR Advance**" means an Advance designated from time to time, as requested or deemed to have been requested by the relevant Borrower, a LIBOR Advance.
- (110) "**LIBOR Advance (Can)**" means each LIBOR Advance, whether denominated in US Dollars, Euros or Sterling, which is funded by the Canadian Lending Office of each Lender.
- (111) "**LIBOR Advance (Europe)**" means each LIBOR Advance, whether denominated in US Dollars, Euros or Sterling, which is funded by the European Lending Office of each Related European Lender.
- (112) "**LIBOR Advance (US)**" means each LIBOR Advance, whether denominated in US Dollars, Euros or Sterling, which is funded by the US Lending Office of each Related US Lender.

- (113) "**Lien**" means any mortgage, lien, hypothec, pledge, security interest, floating charge or other encumbrance.
- (114) "**Local Time**" means:
- (a) in the case of Canadian Accommodations, Toronto, Ontario time;
 - (b) in the case of US Accommodations, New York, New York time; and
 - (c) in the case of European Accommodations, London, England time.
- (115) "**Majority Lenders**" means Lenders whose respective individual Commitments aggregate more than one-half (1/2) of the total Commitments of all Lenders under the Credit Facility.
- (116) "**Mandatory Costs Rate**" means the rate calculated by each Related European Lender of the cost of compliance with existing requirements of the Bank of England and/or the Financial Services Authority and/or European Central Bank (or such other authority which replaces all or any of their functions), in relation to each Interest Period of a LIBOR Advance made by such Lender, as provided for in schedule 10 annexed hereto.
- (117) "**Material Adverse Effect**" means:
- (a) any material adverse change in the assets, properties, operations, financial condition, business or prospects of Finning and its subsidiaries, taken as a whole;
 - (b) any material impairment or reduction in the ability (financial or otherwise) of Finning to fulfil its obligations under this agreement or the Finning Guarantee; or
 - (c) any material adverse effect on the validity or enforceability of any material provision of this agreement or any Facility Guarantee.
- (118) "**Maturity Date**" means October 30, 2022, subject to extension in accordance with section 2.1(8).
- (119) "**Moody's**" means Moody's Investors Service, Inc. and, if such person shall at any time cease to provide Ratings in respect of companies of the nature of Finning, means any other company or organization designated by Finning that is acceptable to the Lenders, acting reasonably, which shall provide a Rating of the long-term corporate credit and/or long-term unsecured debt of Finning on a basis consistent with and using the same nomenclature as Moody's Investors Service, Inc. or that is otherwise acceptable to the Lenders, acting reasonably.

- (120) "**Net Investment Hedge**" means a hedge of foreign currency translation risk of a net investment in a self-sustaining foreign operation which is designated as such, pursuant to GAAP hedge accounting guidelines.
- (121) "**Non-Acceptance Discount Rate**" means, for any day, the Discount Rate that is the lesser of the rates described in paragraph (b)(i) and (b)(ii) of the definition of Discount Rate; provided that, if at any relevant time there are no Reference Lenders, the Non-Acceptance Discount Rate will be the Discount Rate in paragraph (b)(i) of that definition.
- (122) "**Non-Acceptance Lender**" has the meaning set forth in section 4.11.
- (123) "**Notice**" means, as the context requires, an Accommodation Request or a Repayment/Cancellation Notice.
- (124) "**Obligations**" means at any time in respect of the Credit Facility, the amount equal to the sum of:
- (a) the Principal Outstanding under the Credit Facility;
 - (b) all accrued and unpaid interest thereon and all interest on accrued and unpaid interest; and
 - (c) all accrued and unpaid fees, expenses, costs, indemnities, Increased Costs and other amounts payable to the Lenders or the Agents pursuant to the provisions of any Credit Facility Document or otherwise in respect of the Credit Facility.
- (125) "**Obligors**" means, collectively, the Borrowers and each of the guarantors of any Borrower's obligations that are identified elsewhere in this agreement.
- (126) "**Original Credit Agreement**" has the meaning set forth in the recitals hereto.
- (127) "**OFAC**" has the meaning set forth in section 8.2(7).
- (128) "**Other Taxes**" means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Credit Facility Document or from the execution, delivery or enforcement of, or otherwise with respect to, this agreement or any other Credit Facility Document.
- (129) "**Participant**" has the meaning assigned to such term in section 12.8(4).
- (130) "**Payment Account**" means, as the context requires, the relevant account set forth in part 1 of schedule 11 annexed hereto, or such other places or accounts as may be agreed by the Applicable Agent and Finning from time to time and notified to the Lenders.
- (131) "**Permitted Indebtedness**" means:

- (a) Indebtedness under the Credit Facility;
 - (b) Indebtedness with respect to unsecured bonds, medium term notes, commercial paper and debt instruments issued by Finning;
 - (c) Purchase Money Obligations;
 - (d) convertible debentures;
 - (e) preferred shares and other equity or quasi-equity like instruments;
 - (f) inter-company Indebtedness owed by Finning to an affiliate; provided that such Indebtedness is, by its terms or by express agreement of the creditor, subordinate in right of payment to the Obligations of Finning upon the occurrence of an Event of Default;
 - (g) any other Indebtedness owed by a Borrower or Restricted Subsidiary to Finning or to a subsidiary of Finning;
 - (h) Indebtedness of any direct or indirect subsidiary of Finning to any financial institution, the repayment of which is fully secured by the pledge by any one or more Finning Barbados Entities of term deposits, certificates of deposit or similar instruments issued by such financial institution, and which Indebtedness is netted against such pledged collateral in the determination of Finning's Indebtedness on a consolidated basis in accordance with GAAP;
 - (i) Indebtedness arising under Permitted Receivables Securitizations;
 - (j) a credit facility of up to C\$[]⁴ or the Equivalent Amount in any other currency; and
 - (k) other Indebtedness in an amount not exceeding []⁵% of Consolidated Total Assets in the aggregate.
- (132) "**Permitted Liens**" means, in respect of a Borrower or Restricted Subsidiary, any one or more of the following:
- (a) Liens for Taxes, assessments or government charges or levies not at the time due and delinquent or the validity of which is being contested at the time by such Borrower or Restricted Subsidiary in good faith by proper legal proceedings, and which contested Liens have not had and would not reasonably be expected to have a Material Adverse Effect;

⁴ Amount redacted.

⁵ Percentage redacted.

- (b) the Lien of any judgment rendered or claim filed against such Borrower or Restricted Subsidiary which such person shall be contesting in good faith by proper legal proceedings, and which Lien has not had and would not reasonably be expected to have a Material Adverse Effect;
- (c) Liens or privileges imposed by Law such as carriers, warehousemen's, mechanics and materialmen's Liens and privileges arising in the ordinary course of business not at the time due or delinquent or which are being contested at the time by such Borrower or Restricted Subsidiary in good faith by proper legal proceedings, and which contested Liens or privileges have not had and would not reasonably be expected to have a Material Adverse Effect;
- (d) undetermined or inchoate Liens incidental to current operations which have not at such time been filed;
- (e) restrictions, easements, rights-of-way, servitudes or other similar rights in land or immovable property (including rights of way and servitudes for railways, sewers, drains, gas and oil pipelines, gas and water mains, electric light and power and telephone or telegraph or cable television conduits, poles, wires and cables) granted to or reserved by other persons; provided that such restrictions, easements, rights-of-way, servitudes or other similar rights in the aggregate will not materially impair the usefulness, in the operation of the business of such Borrower or Restricted Subsidiary, of such property;
- (f) the right reserved to or vested in any Governmental Authority, by the terms of any Governmental Approval acquired by such Borrower or Restricted Subsidiary or by any Applicable Law, to terminate any such Governmental Approval or to require annual or other payments as a condition to the continuance thereof;
- (g) the encumbrance resulting from the deposit of cash or securities in connection with any of the Liens referred to in paragraph (a), (b) or (c) of this definition pending a final determination as to the existence or amount of any obligation referred to therein, or in connection with contracts, tenders, leases or expropriation proceedings, or to secure workmen's compensation, surety or appeal bonds, costs of litigation when required by Applicable Law and public and statutory obligations, and any right of refund, set-off or charge-back available to any bank or other financial institution; provided that such deposit has not had and would not reasonably be expected to have a Material Adverse Effect;
- (h) security given to a public utility or any other Governmental Authority when required by such utility or other Governmental Authority in

connection with the operations of such Borrower or Restricted Subsidiary in the ordinary course of its business;

- (i) the reservations, limitations, provisos and conditions, if any, expressed in any grants from the Crown or any similar authority;
 - (j) title defects or irregularities which are of a minor nature; provided that such title defects or irregularities in the aggregate will not materially impair the use of the property for the purposes for which it is held by such Borrower or Restricted Subsidiary;
 - (k) any Lien created, incurred or assumed to secure any Purchase Money Obligation; provided that the Lien does not extend to:
 - (i) inventories of equipment for sale or lease or accounts or notes receivable of such Borrower or Restricted Subsidiary; or
 - (ii) any other property of such Borrower or Restricted Subsidiary other than the property so acquired, constructed or improved;
 - (l) (other than in the case of Finning) any Lien in favour of Finning or any subsidiary of Finning;
 - (m) any Lien on the property of any corporation at the time such corporation becomes a subsidiary of Finning;
 - (n) any Lien on any property existing at the time such property is acquired by such Borrower or Restricted Subsidiary;
 - (o) any Lien on the property of any corporation at the time such corporation is consolidated or amalgamated with or merged into such Borrower or any Restricted Subsidiary;
 - (p) any extension, renewal, replacement or refunding of any of the foregoing; provided that the Indebtedness secured thereby outstanding immediately before such extension, renewal, replacement or refunding is not thereby increased; and
 - (q) other Liens securing an amount not in the aggregate at any time exceeding []⁶% of Consolidated Shareholders' Equity at such time (as shown on Finning's most recent audited consolidated financial statements).
- (133) "**Permitted Merger**" means a merger, amalgamation, consolidation or business combination otherwise prohibited by section 8.2(4) where the following conditions are satisfied:

⁶ Percentage redacted.

- (a) either:
 - (i) in the reasonable opinion of the Lenders, the creditworthiness of Finning is not materially less than was the case prior to such merger, amalgamation, consolidation or business combination;

or

 - (ii) such merger, amalgamation, consolidation or business combination involves only persons who are affiliates of Finning and the resulting entity remains (as the case may be) a Borrower or Restricted Subsidiary organized and existing under the laws of Canada, the United States, the United Kingdom, Chile or such other jurisdiction as may be approved by the Lenders acting reasonably;
 - (b) the resulting entity shall have agreed to such amendments to the Credit Facility Documents (if any) as shall be required by the Lenders, acting reasonably, in order to ensure that such resulting entity is bound by the provisions of the Credit Facility Documents to which the relevant Borrowers and/or Restricted Subsidiaries were party;
 - (c) both immediately before and (having regard to the agreed amendments pursuant to paragraph (b)) immediately after such transaction there shall be no Default or Event of Default that has occurred and is continuing; and
 - (d) Finning shall deliver to the Administrative Agent promptly following such transaction a certificate of a Senior Financial Officer and an opinion of counsel to the Borrowers, each stating that such transaction complies herewith and each being otherwise in form and substance reasonably acceptable to the Administrative Agent.
- (134) "**Permitted Receivables Securitizations**" means sales, assignments or other transfers by any Borrower or Restricted Subsidiary of accounts receivable, instalment notes receivable or lessor's interests in equipment leased to customers, where either:
- (a) an amount equal to the proceeds of such transaction is applied to permanently repay any senior Indebtedness of any Borrower or Restricted Subsidiary; or
 - (b) the total exposure of the purchasers under all such transactions (excluding transactions referred to in (a) above) does not exceed, in aggregate, 5% of Consolidated Total Assets.

- (135) "**person**" means any individual, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.
- (136) "**POA Letter of Credit**" has the meaning set forth in section 5.1.
- (137) "**Prime Rate**" means, at any time, the greater of:
- (a) the rate which the principal office of the Administrative Agent in Toronto, Ontario quotes, publishes and refers to as its "prime rate" and which is its reference rate of interest for commercial loans in Canadian Dollars made by the Administrative Agent to Canadian borrowers (which is not necessarily the lowest rate that the Administrative Agent is charging any corporate customer); and
 - (b) the sum of:
 - (i) the average one month bankers' acceptance rate as quoted on Reuters Service page CDOR as at 10:00 a.m. (Toronto time) on such day, expressed as a rate per annum; plus
 - (ii) []⁷ basis points;
- as to which a certificate of the Administrative Agent, absent manifest error, shall be conclusive evidence from time to time. With each quoted or published change in such rate aforesaid of the Administrative Agent there shall be a corresponding change in any rate of interest payable under this agreement based on the Prime Rate should such changed rate exceed that set forth in paragraph (b) of this definition, all without the necessity of any notice thereof to the Borrowers or any other person.
- (138) "**Prime Rate Advance**" means an Advance designated from time to time, as requested or deemed to have been requested by the relevant Borrower, a Prime Rate Advance.
- (139) "**Principal Outstanding**" means, at any time, the amount equal to:
- (a) when used in a context pertaining to Accommodations made by a single Lender under the Credit Facility, the sum of:
 - (i) the aggregate principal amount of all Advances and BA Equivalent Advances then outstanding made by (or continued by, as contemplated by section 1.8) such Lender (including, if the Swingline Commitment has been terminated, (x) in the case of a Lender other than the Swingline Lender, such

⁷ Fee information redacted.

Lender's participation in any unreimbursed Swingline Advances as contemplated by section 12.1(1), or (y) in the case of the Swingline Lender, only that portion of the unreimbursed Swingline Advances in respect of which the other Lenders have not purchased participations as contemplated by such section); and

- (ii) the Face Amount of all Accommodations then outstanding made by (or continued by, as contemplated by section 1.8) such Lender by way of Bankers' Acceptances (whether or not held by such Lender) and Letters of Credit (including such Lender's pro rata interest in Letters of Credit issued by the Issuing Bank); and
- (b) when used elsewhere in this agreement with reference to the Credit Facility as a whole, the sum of:
- (i) the aggregate principal amount of all Advances and BA Equivalent Advances then outstanding made by (or continued by, as contemplated by section 1.8) the Lenders; and
 - (ii) the Face Amount of all Accommodations then outstanding made by (or continued by, as contemplated by section 1.8) the Lenders by way of Bankers' Acceptances (whether or not held by the respective Lenders) and Letters of Credit.
- (140) "**Purchase Money Obligation**" means any indebtedness for money borrowed, or for deferred purchase price obligations or for indebtedness under any conditional sale or other title retention agreement, incurred in respect of the cost of acquisition of any property or the cost of the construction or improvement of any property acquired, constructed or improved after the date herein, which indebtedness was created incurred, or assumed contemporaneously with the acquisition, construction or improvement or within 180 days after the completion thereof.
- (141) "**Putable Securities**" means preferred shares which are redeemable on a mandatory basis or at the option of the holder, either generally or under circumstances which have occurred and are continuing.
- (142) "**Rateable Portion**" means, as to any Lender or Lender Group:
- (a) at any time (unless clause (b) or (c) below applies), the fraction which such Lender's or Lender Group's Commitment (excluding the Swingline Commitment, if applicable) then constitutes of the aggregate Commitments (excluding the Swingline Commitment);
 - (b) at any time after the Swingline Commitment shall have been terminated, (unless clause (c) below applies), the fraction which such

Lender's or Lender Group's Commitment (including, if it is the Swingline Lender, the portion of its Commitment formerly segregated as the Swingline Commitment) then constitutes of the aggregate Commitments (including such formerly segregated portion); or

- (c) at any time after all Commitments shall have expired or been terminated, the percentage which the Canadian Dollar Equivalent Principal Outstanding of such Lender's or Lender Group's Accommodations (including its participation in any unreimbursed Swingline Advances as contemplated by section 12.1(1)), or if it is the Swingline Lender then including in the case of unreimbursed Swingline Advances only that portion in respect of which other Lenders have not purchased participations as contemplated by such section)) then constitutes of the Canadian Dollar Equivalent Principal Outstanding of all Accommodations (including Swingline Advances);

provided that, where reference is made to the portion of an Accommodation to be made available by a Lender, or a payment to or for the account of such Lender in respect thereof, such Lender's Rateable Portion shall be determined having regard to any allocation in accordance with section 2.8;

and further provided that, with respect to each Accommodation that is a continuation within a pre-existing interest period of an accommodation under the Existing Credit Agreement, "Rateable Portion" in respect of such Accommodation for the balance of such interest period will be determined without consideration of the Commitments of any Lenders who became Lenders (other than by way of taking an assignment of another Lender's Commitment and Accommodations) during such interest period.

- (143) "**Rating**" means, with respect to a person, the credit rating assigned by a Rating Agency to the long-term senior unsecured public debt of such person.
- (144) "**Rating Agencies**" means, at any time, DBRS and S&P.
- (145) "**RBC EL**" means RBC Europe Limited, formerly known as Royal Bank of Canada Europe Limited.
- (146) "**receiver**" includes a receiver, receiver/manager and receiver and manager.
- (147) "**Reference Lenders**" means any two Lenders as selected by the Administrative Agent from time to time and that are acceptable to Finning which are banks under Schedule II of *the Bank Act* (Canada).
- (148) "**Related European Lender**" means, with respect to each Canadian Lender, the affiliate (including any agency or branch) of such Canadian Lender, or such Canadian Lender itself, which maintains a European Lending Office for the purposes of this agreement and from time to time is party to this agreement as a "**Related European Lender**".

- (149) "**Related Parties**" means, with respect to any person, such person's affiliates and the directors, officers, employees, agents and advisors of such person and of such person's affiliates.
- (150) "**Related US Lender**" means, with respect to each Canadian Lender, the affiliate (including any agency or branch) of such Canadian Lender, or such Canadian Lender itself, which maintains a US Lending Office for the purposes of this agreement and from time to time is party to this agreement as a "**Related US Lender**".
- (151) "**Release**" includes releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping, or permitting any of the foregoing to occur.
- (152) "**Repayment/Cancellation Notice**" means a notice in the form of or to substantially similar effect as schedule 3 annexed hereto, given to the Applicable Agent by the relevant Borrower pursuant to any relevant provision of this agreement.
- (153) "**Required Notice**", when used with respect to a type of Accommodation, a payment, prepayment or reduction of the Commitments hereunder, means such number of days' notice to the Applicable Agent as is set forth in schedule 6 annexed hereto.
- (154) "**Restricted Subsidiary**" means:
- (a) all Borrowers other than Finning; and
 - (b) such other subsidiaries of Finning as are designated by Finning as Restricted Subsidiaries in accordance with section 1.4.
- (155) "**Rollover**" means, in respect of a Borrowing by way of CDOR Rate Advances or LIBOR Advances, the continuation thereof or any portion thereof for a succeeding Interest Period and, in respect of a Drawing, the issuance of a further Drawing on any day in a Face Amount not exceeding the Face Amount of the Drawing maturing on that day, the proceeds of which are used to pay (directly or indirectly) the maturing Drawing, all as contemplated by section 2.10.
- (156) "**Royal Bank**" means Royal Bank of Canada, a Canadian chartered bank.
- (157) "**S&P**" means Standard & Poor's Ratings Services, a division of The McGraw Hill Companies, Inc., and, if such person shall at any time cease to provide Ratings in respect of companies of the nature of Finning, means any other company or organization designated by Finning that is acceptable to the Lenders, acting reasonably, which shall provide a Rating of the long-term corporate credit and/or long-term unsecured debt of Finning on a basis consistent with and using the same nomenclature as Standard & Poor's

Ratings Services or that is otherwise acceptable to the Lenders, acting reasonably.

- (158) "**Schedule I Bank**", "**Schedule II Bank**" or "**Schedule III Bank**" mean a bank under (as the case may be) Schedule I or II of the *Bank Act* (Canada) or an authorized foreign bank under Schedule III of the *Bank Act* (Canada).
- (159) "**Senior Financial Officer**" means the Executive Vice President and Chief Financial Officer, the Vice President - Treasurer, the Senior Vice President - Corporate Controller, the Corporate Secretary or the Assistant Treasurer of Finning.
- (160) "**Senior Officer**" means the President and Chief Executive Officer, the Executive Vice President and Chief Financial Officer, the Vice President - Treasurer, the Senior Vice President - Corporate Controller, and the Corporate Secretary of Finning.
- (161) "**Sterling**" and the symbol "£" mean pounds sterling.
- (162) "**subsidiary**" means, in respect of any person, any corporation or other entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors (or persons with similar authority) are directly or indirectly owned or controlled (within the meaning of the Canada Business Corporations Act as in effect on the date hereof) by such person.
- (163) "**Swingline Advance**" has the meaning set forth in section 2.1(6).
- (164) "**Swingline Commitment**" means the amount set forth as being available "for Swingline Advances only unless and until the Swingline Commitment has been terminated" opposite the Swingline Lender's name under the heading "Commitment" on schedule 1 annexed hereto, to the extent not permanently reduced, cancelled or terminated pursuant to this agreement.
- (165) "**Swingline Lender**" means The Toronto-Dominion Bank, acting through its Canadian Lending Office, in its capacity as the lender of Swingline Advances.
- (166) "**Taking**" means the expropriation, condemnation or taking by eminent domain or similar authority, or by any proceeding or purchase in lieu or anticipation thereof, of any property or asset or any right, title or interest therein by any Governmental Authority.
- (167) "**Taxes**" means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

- (168) "**this agreement**", "herein", "hereof", "hereto" and "hereunder" and similar expressions mean and refer to the Original Credit Agreement as supplemented, amended, restated and replaced from time to time (including by this Amendment and Restatement and any joinder agreements), and not to any particular Article, section, paragraph, schedule or other portion hereof; and the expressions "Article", "section", "paragraph" and "schedule" followed by a number or letter mean and refer to the specified Article, section, paragraph or schedule of this agreement.
- (169) "**Total Capitalization**" means, as at any date of determination, the sum of Total Debt and Consolidated Shareholders Equity.
- (170) "**Total Debt**" means, as of the date of any determination thereof, the sum of all Indebtedness of Finning on a consolidated basis, determined in accordance with GAAP; but net of unencumbered short term cash or cash equivalents.
- (171) "**Total Debt to Total Capitalization Ratio**" means, as at the date of determination, the consolidated ratio of Total Debt to Total Capitalization.
- (172) "**US Accommodation**" means an Accommodation in favour of any US Borrower.
- (173) "**US Borrowers**" means, collectively and unless and until such person is removed in accordance with section 2.1(10), FICSA and (as of August 20, 2007) Moncouver S.A. and (as of the relevant future date) any other person from time to time added as a US Borrower in accordance with section 2.1(11), and "US Borrower" means any one of the said persons.
- (174) "**US Dollar Exchange Rate**" means, on a particular date, in relation to the conversion of US Dollars into Canadian Dollars, the spot rate of exchange for such conversion as quoted by the Bank of Canada at the close of business on the Business Day that such conversion is to be made (or, if such conversion is to be made before close of business on such Business Day, then at approximately close of business on the immediately preceding Business Day), and, in either case, if no such rate is quoted, the spot rate of exchange quoted for wholesale transactions by the Administrative Agent on the Business Day such conversion is to be made in accordance with its normal practice.
- (175) "**US Dollars**", "**United States Dollars**" and "**US\$**" each mean lawful money of the United States of America in same day immediately available funds or, if such funds are not available, the form of money of the United States of America that is customarily used in the settlement of international banking transactions on the day payment is due hereunder.
- (176) "**US Lending Office**" means, as to each Related US Lender:

- (a) the office specified as the "US Lending Office" of such Lender on schedule 1 annexed hereto;
 - (b) such other office in the United States as may be designated by such Lender by written notice to the Administrative Agent and Finning; or
 - (c) such other office as may be designated by such Lender by written notice to, and agreed to by, the Administrative Agent and Finning in Finning's sole discretion.
- (177) "**US Prime Rate**" means, for any day, a fluctuating rate per annum equal to the higher of (a) the Federal Funds Effective Rate plus []⁸ per annum, and (b) the rate of interest in effect for such day as determined by Royal Bank, from time to time in its sole discretion as its prime commercial lending rate for US Dollar loans in the United States for such day. The U.S. prime rate is not necessarily the lowest rate that Royal Bank charges any corporate customer. With each change in such rate aforesaid of Royal Bank there shall be a corresponding change in the rate of interest payable under this agreement, should such changed rate exceed that set forth in paragraph (a) of this definition, all without the necessity of any notice thereof to the Borrowers or any other person.
- (178) "**US Prime Rate Advance**" means an Advance designated from time to time, as requested or deemed to have been requested by the relevant Borrower, a US Prime Rate Advance.
- (179) "**Uniform Customs**" means the Uniform Customs and Practice for Documentary Credits, as published by the International Chamber of Commerce and in effect from time to time.

1.2 Interpretation.

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

⁸ Fee information redacted.

- (a) any definition of or reference to any agreement, instrument or other document herein (including this agreement) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented, restated or otherwise modified (subject to any restrictions on such amendments, supplements, restatements or modifications set forth herein);
 - (b) any reference herein to any person shall be construed to include such person's successors and permitted assigns;
 - (c) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time; and
 - (d) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.
- (6) *Inclusion Rules.* In this agreement, in the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the words "from" and "commencing" each mean "from and including" and the words "to", "until" and "ending" each mean "to but excluding".
- (7) *Ibid.* Where in this agreement a notice must be given a number of days prior to a specified action, the day on which such notice is given shall be included and the day of the specified action shall be excluded.
- (8) *Accounting Terms.* All accounting terms not specifically defined herein shall be construed in accordance with GAAP. In the event that a change in GAAP or the application thereof to the financial statements of Finning shall result in the financial covenant set forth in section 8.3 having a materially different economic effect, Finning and the Administrative Agent shall use all reasonable efforts to agree on such changes to the said covenant, or to the definitions comprising the constituent elements thereof, so as to preserve the economic effect of such covenant as at the date of the Amendment and Restatement Closing Date. In the event that Finning and the Administrative Agent are unable to reach such agreement, all calculations thereafter made for the purpose of determining compliance with that financial covenant shall be made on a basis consistent with GAAP as in existence on the Amendment and Restatement Closing Date. It is acknowledged that, notwithstanding that the financial statements of a Restricted Subsidiary may be prepared on the basis of GAAP of local application as contemplated in clause (b)(ii) of the definition of "GAAP" in section 1.1, the audited consolidated statements of Finning for all purposes hereof (including determining compliance with the provisions of this agreement) shall be prepared on the basis of GAAP as contemplated in clause (a) of such definition.

- (9) *Incorporation of Schedules.* Schedules 1 to 13 annexed hereto shall, for all purposes hereof, form an integral part of this agreement.
- (10) *Interpretation not Affected by Headings, etc.* The division of this agreement into Articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.
- (11) *General Provisions as to Certificates and Opinions, etc.* Whenever the delivery of a certificate is a condition precedent to the taking of any action by an Agent or any Lender hereunder, the truth and accuracy of the facts and the diligent and good faith determination of the opinions stated in such certificate shall in each case be conditions precedent to the right of a Borrower to have such action taken, and any certificate executed by a Borrower shall be deemed to represent and warrant that the facts stated in such certificate are true, accurate and complete.
- (12) *Nature of Obligations.* The liability of the Borrowers in respect of the Obligations shall be several but not joint, with the effect that, except for Finning, FICSA and any other guarantor pursuant to its Facility Guarantee, no Borrower shall be liable for repayment of any Obligations incurred by any other Borrower, or for the payment of interest thereon or fees relating thereto.

1.3 Appointment of Attorney and Process Agent.

- (1) Each of the Borrowers other than Finning hereby irrevocably constitutes and appoints Finning the true and lawful attorney of such Borrower. As the attorney of such Borrower, Finning has the power to exercise for and in the name of such Borrower, with full power of substitution, any of such Borrower's rights and powers hereunder and under any other Credit Facility Documents, including the execution and delivery of any notices, requests and other documents hereunder and thereunder, and Finning and its nominees or transferees are hereby empowered to exercise all such rights and powers to the same extent as such Borrower might do. This power of attorney is irrevocable, is coupled with an interest, has been given for valuable consideration (the receipt and adequacy of which is acknowledged) and survives, and does not terminate upon, the bankruptcy, dissolution, winding up or insolvency of such Borrower. This power of attorney extends to and is binding upon such Borrower's successors and permitted assigns. Each such Borrower authorizes Finning to delegate in writing to another person any power and authority of Finning under this power of attorney as may be necessary or desirable in the opinion of Finning, and to revoke or suspend such delegation.
- (2) Each of the Borrowers other than Finning hereby irrevocably appoints Finning as its agent to receive on behalf of such Borrower service of copies of any summons, complaint or other process which may be served in any action or proceeding arising out of or relating to this agreement or any other Credit Facility Document.

1.4 Restricted Subsidiaries. Finning may from time to time:

- (1) designate a subsidiary as a Restricted Subsidiary; or
- (2) terminate the designation of a person as a Restricted Subsidiary;

upon delivery to the Administrative Agent of a written request for such designation or termination, as the case may be, in the form of schedule 12 annexed hereto. Where the relevant request is for the termination of a Restricted Subsidiary, Finning shall provide such request to the Administrative Agent at least 30 days prior to the effective date of such termination.

1.5 Investments. Where monies are held by the Administrative Agent and are to be invested in Cash Equivalents as the Administrative Agent shall determine, in making any such determination the Administrative Agent shall consider in good faith any requests made by Finning as to the nature of such investments, the parties hereby acknowledging and confirming the sole discretion of the Administrative Agent in this regard.

1.6 Amendment and Restatement. This Amendment and Restatement, upon becoming effective when so provided in section 6.1, will constitute an amendment and restatement of the Existing Credit Agreement and will supersede the Existing Credit Agreement in its entirety. Notwithstanding that this Amendment and Restatement is dated as of October 30, 2017 and has been executed by the parties hereto, it shall only become effective if and when so provided in section 6.1.

1.7 Other Credit Facility Documents. With respect to each of the Credit Facility Documents to which any Borrower is a party (other than the Original Credit Agreement, the amendment and restatement of credit agreement dated for reference August 20, 2007 in respect of such credit agreement (the "**2007 Credit Agreement**") and the Existing Credit Agreement), it is hereby confirmed and agreed:

- (a) that all references therein to the Original Credit Agreement, the 2007 Credit Agreement or the Existing Credit Agreement will constitute references to such agreement as amended, supplemented, restated and replaced from time to time (including by this Amendment and Restatement); and
- (b) that notwithstanding the amendments and restatement provided for in this Amendment and Restatement, each of the existing Credit Facility Documents to which any Borrower is a party (other than the Original Credit Agreement, the 2007 Credit Agreement and the Existing Credit Agreement), and all covenants, clauses, provisions, powers, matters and things contained therein, shall continue in full force and effect.

1.8 Continuation of Existing Accommodations. Each Accommodation under or in connection with the Existing Credit Agreement (including the aggregate principal amount outstanding of each Advance to any Borrower, the Face Amount outstanding of each

Bankers' Acceptance accepted at the request of any Borrower, and the Face Amount of each Letter of Credit issued at the request of any Borrower) shall continue as an Accommodation (in each case, of the same nature) by the relevant Borrower under this Amendment and Restatement

**ARTICLE 2
THE CREDIT FACILITY**

2.1 Credit Facility.

(1) *Commitment.* Subject to the terms and conditions herein set forth:

- (a) the Credit Facility is to be made available by the Lenders to the Borrowers on a revolving basis in the principal amount of up to but not exceeding C\$1 billion, subject to increase in accordance with section 2.1(9) (and subject to decrease in accordance with sections 2.1(7) and 2.1(8));
- (b) the Credit Facility shall be available in the following currencies:

Canadian Dollars:

Prime Rate Advances
Bankers' Acceptances
CDOR Rate Advances
Letters of Credit

US Dollars:

Base Rate Advances
US Prime Rate Advances
LIBOR Advances
Letters of Credit

Euros:

LIBOR Advances
Letters of Credit

Sterling:

LIBOR Advances
Letters of Credit

and to the Borrowers on the following bases:

Canadian Borrowers:

Prime Rate Advances
Bankers' Acceptances
CDOR Rate Advances
Base Rate Advances
LIBOR Advances
Letters of Credit

US Borrowers:

CDOR Rate Advances
LIBOR Advances
US Prime Rate Advances
Letters of Credit

European Borrowers:

CDOR Rate Advances
LIBOR Advances
Letters of Credit

- (c) each Lender shall make available its Rateable Portion of all Accommodations under the Credit Facility (except that the obligation to make Swingline Advances will be that of the Swingline Lender only); provided that, in respect of each Lender:
 - (i) the responsibility for advancing an amount equal to its Rateable Portion of any Canadian Accommodations shall fall solely upon the Canadian Lending Office of such Lender;
 - (ii) the responsibility for advancing an amount equal to its Rateable Portion of any US Accommodations shall fall solely upon the US Lending Office of the Related US Lender of such Lender; and
 - (iii) the responsibility for advancing an amount equal to its Rateable Portion of any European Accommodations shall fall solely upon the European Lending Office of the Related European Lender of such Lender;
 - (d) in no event shall a Lender be obligated to make Accommodations available under the Credit Facility if after making such Accommodations the Canadian Dollar Equivalent Principal Outstanding of that Lender's Accommodations would exceed that Lender's Commitment; and
 - (e) the Borrowers acknowledge that from time to time, CDOR Rate Advances (Europe) and CDOR Rate Advances (US) may be available only for certain Interest Periods or may not be available at all.
- (2) *Purposes.* The Credit Facility shall be used for general corporate purposes, including capital expenditures; provided that, in the event that a Borrower wishes to utilize proceeds of one or more Accommodations under the Credit Facility to (or to provide funds to any subsidiary, affiliate or other person to) finance an offer to acquire (which shall include an offer to purchase securities, solicitation of an offer to sell securities, an acceptance of an offer to sell securities, whether or not the offer to sell was solicited, or any combination of the foregoing) outstanding securities of any person (the "**Target**") which constitutes a "**take-over bid**" pursuant to applicable corporate or securities legislation (in any case, a "**Takeover Bid**") and if the Takeover Bid is, under Applicable Law, such as to require the board of directors or like body of the Target to prepare a directors circular or like document that includes either a recommendation to accept or to reject the Takeover Bid or a statement that they are unable to make or are not making a recommendation, then either:
- (a) prior to or concurrently with delivery to the Administrative Agent of any Accommodation Request, the proceeds of which are intended to be utilized as aforesaid, Finning shall provide to the Administrative

Agent evidence satisfactory to the Administrative Agent (acting reasonably) that the board of directors or like body of the Target, or the holders of all of the securities of the Target, has or have approved, accepted, or recommended to security holders acceptance of, the Takeover Bid;

or:

- (b) the following steps shall be followed:
- (i) at least five Business Days prior to the delivery to the Administrative Agent of such Accommodation Request, Finning shall advise the Administrative Agent (who shall promptly advise each Lender) of the particulars of such Takeover Bid;
 - (ii) within three Business Days of being so advised, each Lender shall notify the Administrative Agent of such Lender's determination as to whether it is willing to fund under such Accommodation Request; provided that, in the event such Lender does not so notify the Administrative Agent within such three Business Day period, such Lender shall be deemed to have notified the Administrative Agent that it is not so willing to fund; and
 - (iii) the Administrative Agent shall promptly notify Finning of each such Lender's determination;

and in the event that any Lender (each, a "**Declining Lender**") has notified or is deemed to have notified the Administrative Agent that it is not willing to fund under such Accommodation Request, then such Declining Lender shall have no obligation to fund under such Accommodation Request, notwithstanding any other provision of this agreement to the contrary; provided, however, that each other Lender (each, a "**Financing Lender**") which has advised the Administrative Agent it is willing to fund under such Accommodation Request shall have an obligation, up to the amount of its unused Commitment under the Credit Facility, to fund under such Accommodation Request, and such funding shall be provided by each Financing Lender in accordance with the ratio, determined prior to the provision of such funding, that the Commitment of such Financing Lender bears to the aggregate of the Commitments of all the Financing Lenders.

If Accommodations are provided in the manner contemplated by the foregoing paragraph and there are Declining Lenders, subsequent Accommodations under the Credit Facility shall be funded firstly by Declining Lenders having unused Commitments, and subsequent repayments under the Credit Facility shall be applied firstly to Financing Lenders, in each case until such time as the amount of each Lender's Principal

Outstanding is equal to its Rateable Portion of the aggregate Principal Outstanding.

For greater certainty, in no event shall a Declining Lender be obligated to purchase any participation in accordance with section 12.1(3) to the extent that the shortfall in such Declining Lender's share of outstanding Obligations under the Credit Facility is attributable to the operation of this section 2.1(2).

- (3) *Availability Period.* Subject to the terms and conditions herein set forth, Accommodations will be made available by way of multiple draws from time to time up to the Business Day immediately preceding the Maturity Date.
- (4) *Minimum Amounts.* Subject to the Majority Lenders in any specific instance waiving such requirement, the following minimum amounts shall apply in respect of certain Borrowings and Drawings requested under each Accommodation Request (other than Swingline Advances, which are subject to the requirements of section 2.1(6)):
 - (a) the aggregate of the Prime Rate Advances requested in any Borrowing shall be at least C\$2.5 million and a whole multiple of C\$100,000;
 - (b) each Bankers' Acceptance shall be in a Face Amount of at least C\$100,000 and a whole multiple thereof;
 - (c) the aggregate of the Face Amount of Bankers' Acceptances requested in any Drawing shall be at least C\$2.5 million and a whole multiple of C\$100,000;
 - (d) the aggregate of the US Prime Advances or Base Rate Advances requested in any Borrowing shall be at least US\$2.5 million and a whole multiple of US\$100,000;
 - (e) the aggregate of the CDOR Rate Advances requested in any Borrowing shall be at least C\$1 million and a whole multiple of C\$100,000; and
 - (f) the aggregate of the LIBOR Advances requested in any Borrowing shall be at least US\$2.5 million (or, as the case may be, €2.5 million or £2.5 million) and a whole multiple of US\$100,000 (or, as the case may be, €100,000 or £100,000).
- (5) *Revolving Nature.* The Credit Facility is a so-called "revolving" facility and amounts may be repaid thereunder and subsequently made the subject of a further Accommodation (subject to compliance with the terms and conditions of this agreement). Repayments on account of the Obligations in accordance with the revolving nature of the Credit Facility will be made on the Required Notice by delivery of a Repayment/Cancellation Notice.

- (6) *Swingline*. In the event that Finning has a requirement for a Prime Rate Advance or a Base Rate Advance in immediately available funds in an amount up to the Swingline Commitment (or the Equivalent Amount in US\$) in the aggregate, Finning may (subject to satisfaction of the applicable terms and conditions hereof) obtain such Advance (in this section 2.1(6), a "**Swingline Advance**") under the Credit Facility from the Swingline Lender alone, as follows:
- (a) a Swingline Advance may be made on the same day's telephone request made on or before 1:00 pm (Toronto time) on such day in the case of Swingline Advances denominated in Canadian Dollars, and 12:00 noon (Toronto time) on such day in the case of Swingline Advances denominated in US Dollars, by Finning providing to the Swingline Lender the same information as would be contained in an Accommodation Request (which shall be deemed to have been so provided); and
 - (b) regarding the Concentration Accounts:
 - (i) any net debit balance at the end of any Business Day, after application of the netting process contemplated under the cash management arrangements from time to time in place between Finning and the Swingline Lender, (for the purposes of this section 2.1(6)(b), a "**Closing Debit Balance**") in the Canadian Dollar Concentration Account shall be deemed for all purposes of this Agreement to constitute a Swingline Advance, with the amount of such Swingline Advance to fluctuate in accordance with fluctuations in the Closing Debit Balance in the Canadian Dollar Concentration Account from Business Day to Business Day; and
 - (ii) any Closing Debit Balance in the US Dollar Concentration Account shall be deemed for all purposes of this Agreement to constitute a Swingline Advance (with interest thereon as applicable for Base Rate Advances), with the amount of such Swingline Advance to fluctuate in accordance with fluctuations in the Closing Debit Balance in the US Dollar Concentration Account from Business Day to Business Day.

The intent and effect of this section 2.1(6)(b) is that Finning shall be permitted to be in overdraft on any one or more of its Concentration Accounts with the Swingline Lender from time to time, but only to the extent that the aggregate amount of any resulting deemed Swingline Advances (expressed in Canadian Dollars, with each US Dollar amount converted for purposes of such calculation into the Equivalent Amount in Canadian Dollars), when taken together with the aggregate amount of any other outstanding Swingline Advances

(expressed in Canadian Dollars, with each US Dollar amount similarly converted), does not exceed the Swingline Commitment.

In order to enable the Administrative Agent to calculate the standby fee contemplated by section 2.6(a), the Swingline Lender will, promptly on receipt of a request from the Administrative Agent, provide the Administrative Agent with such information and calculations regarding Swingline Advances as the Administrative Agent may reasonably request.

- (7) [intentionally deleted].
- (8) *Extension.* Finning may, during the period between 60 and 90 days prior to the date (the "Extension Date") that is the first or any subsequent anniversary of the Amendment and Restatement Closing Date, make a request to the Administrative Agent for an extension of the Maturity Date for an additional period (as specified in such request) of one, two, three or four years (effective as of the Extension Date), provided that the requested extension would not cause the extended Maturity Date to be more than five years from the Extension Date. Not later than the date that is 30 days after such a request, the Administrative Agent, subject to the consent of the Majority Lenders (which consent may be granted or refused by the Lenders in their sole and absolute discretion), will extend the Maturity Date for the requested additional period, such extension applying only to those Lenders which provided their consent to the extension request. A failure of a Lender to respond affirmatively to the Administrative Agent, or a failure of the Administrative Agent to respond affirmatively to Finning, prior to the time required for a response shall be considered a negative response.

In the event that the Lenders consenting as aforesaid to an extension of the Maturity Date (collectively, the "**Consenting Lenders**") constitute Majority Lenders, the Accommodations of a Lender not consenting (a "**Non-Consenting Lender**") shall be subject to the following options of each relevant Borrower in respect of such Lender (which options may be exercised by such Borrower in combination with respect to a Non-Consenting Lender, and in a different manner with respect to different Non-Consenting Lenders):

- (a) on or before the Extension Date, to repay any Accommodations made by the Non-Consenting Lender and reduce the Commitment of such Non-Consenting Lender to zero and reduce the aggregate Credit Facility by the same amount;
- (b) on or before the Extension Date, to replace all or part of the Commitment of the Non-Consenting Lender by Commitment increases of one or more Consenting Lenders, at their option, or by one or more new lenders each of which is a bank whose senior, unsecured, non-credit enhanced, long term debt is rated at least A3, A- or A low by at least two of Moody's, S&P and DBRS, respectively, or is otherwise satisfactory to such Borrower and to the

Administrative Agent and the Swingline Lender, both acting reasonably, and to the extent that the Commitment of such Non-Consenting Lender is not replaced, to repay any remaining Accommodations made by such Non-Consenting Lender and reduce the remaining Commitment of such Non-Consenting Lender to zero and reduce the aggregate Credit Facility by the same amount; and

- (c) to allow the Accommodations made by the Non-Consenting Lenders to remain outstanding after the Extension Date as if the Maturity Date were not extended, and accordingly the Non-Consenting Lenders shall be obligated to make their Rateable Portion of the Credit Facility available to the Borrowers until the Maturity Date without giving effect to such extension (but, if applicable, as previously extended with the consent of such Non-Consenting Lender) on all the same terms and conditions as set out in this agreement, excluding any changes to the Applicable Margins and fees resulting from the review by the Consenting Lenders referred to in section 2.1(8)(d).

For greater certainty:

- (d) except for Accommodations made by the Non-Consenting Lenders as contemplated by the foregoing paragraph (c) (including Rollovers and Conversions thereof), Applicable Margins and fees are subject to review by the Consenting Lenders on the extension request, without the need for any further approval under section 12.2;
 - (e) if Finning does not approve of the resulting Applicable Margins and fees, it may withdraw the extension request; and
 - (f) the failure to request an extension in respect of any one Extension Date will not extinguish Finning's right to request extensions in respect of future Extension Dates.
- (9) *Accordion.* Subject to the approval of the Lenders, upon written notice to the Administrative Agent, Finning may at any time request an increase in the aggregate Commitments, so that the aggregate Commitments may be up to C\$1.2 billion. The Lenders at the time of such request shall not be obliged to participate in any requested increase and the Borrowers may pursue and include new lenders to assist in funding the increase in the Credit Facility; provided that the addition of new lenders shall be subject to:
- (a) the ability of the new lenders to make funding available in each of the relevant lending jurisdictions;
 - (b) the consent of the Issuing Bank; and
 - (c) the execution and delivery by such new lenders of such accession or similar agreements as may be advised by Lenders' Counsel in order

that such new lenders shall be bound by the terms and conditions of this agreement.

- (10) *Removal of Borrowers.* Finning may from time to time remove a Borrower (other than itself) as a borrower under the Credit Facility, on not less than 30 days' prior written notice to the Administrative Agent, subject to the condition that all obligations of such Borrower under the Credit Facility be repaid or (unless a Default or Event of Default shall have occurred and be continuing) expressly assumed (in such manner as the Administrative Agent shall reasonably request) by one of the other Borrowers.
- (11) *Addition of Borrowers.* Finning may from time to time give notice in writing to the Administrative Agent of the proposed addition of one or more subsidiaries as Canadian Borrowers, European Borrowers and/or US Borrowers under the Credit Facility, provided that the addition of each proposed Borrower shall only become effective if and when the following conditions precedent set forth in this section 2.1(11) shall have been satisfied, fulfilled or otherwise met to the satisfaction of (or waived in writing by) the Lenders and the Administrative Agent shall have issued to Finning a notice confirming the same:
 - (a) each of the Lenders and Agents (in each case, in its sole and absolute discretion) has consented in writing to the addition of each proposed Borrower;
 - (b) each of the Obligors has consented in writing to the addition of each proposed Borrower;
 - (c) each proposed Borrower (as a Canadian Borrower, European Borrower or US Borrower, as applicable) and Finning shall have executed and delivered to the Administrative Agent a joinder agreement in the form of schedule 13 annexed hereto;
 - (d) each guarantor of any Borrower's Obligations shall have executed and delivered to the Administrative Agent a guarantee confirmation in respect of its Facility Guarantee (confirming inter alia that it remains in effect and will cover inter alia all Obligations of each proposed Borrower), in form and substance satisfactory to the Administrative Agent; and
 - (e) each of the conditions precedent set out in sections 6.1(2), (3), (4), (5), (6), (7), (9), (10), (12), (13), (14), (15) and (16), mutatis mutandis, shall have been met (and, without limitation, each reference in any such section to one or more Borrowers will be construed as a reference to each proposed Borrower and also each Borrower whose Facility Guarantee covers a proposed Borrower's Obligations).

2.2 Amortization.

- (1) *General.* The Principal Outstanding and all other Obligations under the Credit Facility will become due and payable in full on the Maturity Date.
- (2) *Foreign Exchange Fluctuations.* If:
 - (a) at any time the Canadian Dollar Equivalent Principal Outstanding under the Credit Facility shall exceed 105% of the aggregate Commitments of the Lenders; or
 - (b) at the end of any Financial Quarter, the Canadian Dollar Equivalent Principal Outstanding under the Credit Facility shall exceed the aggregate Commitments of the Lenders;

in either case solely by virtue of a change in the Equivalent Amount in Canadian Dollars of Accommodations made in any other currency, such one or more Borrowers as shall be selected by Finning shall forthwith following demand therefor by the Administrative Agent pay to the Administrative Agent such amount as is required to reduce such Principal Outstanding to such aggregate Commitments; provided that, in the event that following repayment of all outstanding Prime Rate Advances, Base Rate Advances and US Prime Rate Advances there remains an excess attributable to the outstanding principal amount under CDOR Rate Advances, LIBOR Advances or the Face Amount of outstanding Bankers' Acceptances or Letters of Credit, such excess amount shall be paid by such Borrower(s) to the Administrative Agent, and shall be held by the Administrative Agent (pending the expiry of subsisting Interest Periods, the maturity of Bankers' Acceptances or the termination of Letters of Credit, as the case may be) in a trust account and invested in Cash Equivalents as directed by the Administrative Agent and applied against the obligations of such Borrower(s) in respect of such CDOR Rate Advances, LIBOR Advances, Bankers' Acceptances or Letters of Credit as they come due.

2.3 Voluntary Reductions. Finning shall have the right at any time and from time to time, without penalty or bonus, upon delivery of a Repayment/Cancellation Notice to the Administrative Agent on the Required Notice, to terminate the whole or reduce in part on a permanent basis the unused portion of the Commitments of the Lenders in respect of the Credit Facility (the reduction of the Commitment of each Lender to be its Rateable Portion of the aggregate reduction); provided that each partial reduction shall be in an aggregate minimum amount of C\$10 million and multiples in excess thereof of C\$1 million.

2.4 Payments.

- (1) *Payment Account.* Except as otherwise provided in section 2.1(6) for payments in respect of Swingline Advances, the relevant Borrower shall make each payment to be made hereunder, following delivery of (where applicable) a Repayment/Cancellation Notice and on the Required Notice, not later than 3:00 p.m. (Local Time) in the currency of the Accommodation or other Obligation in respect of which such payment is made (be it Canadian

Dollars, US Dollars, Euros or Sterling) on the day (subject to section 2.4(2)) when due, in same day funds, by deposit of such funds to the Payment Account.

- (2) *Business Day.* Subject to the next following sentence and the definition of "Maturity Date", whenever any payment hereunder is due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or fees, as the case may be. If any such extension would cause any payment of interest or fees on an Accommodation to be made in the next following calendar month, such payment shall be made on the last preceding Business Day.
- (3) *Application.* Unless otherwise provided herein, all amounts received by the Administrative Agent on account of the Obligations shall be applied by the Administrative Agent as follows:
 - (a) first, to fulfil the relevant Borrower's obligation to pay accrued and unpaid interest due and owing (including interest on overdue interest and on other amounts), excluding interest accruing on BA Equivalent Advances;
 - (b) second, to fulfil such Borrower's obligation to pay any fees which are due and owing to the Lenders hereunder (including those fees set forth in section 2.6), and any Increased Costs and other unpaid costs, expenses and other amounts (other than those covered by (c) below) payable to the Agents and the Lenders in connection with any of the Credit Facility Documents;
 - (c) third, to fulfil such Borrower's obligation to pay interest accruing on BA Equivalent Advances and any amounts due and owing on account of Principal Outstanding under the Credit Facility (including in respect of the Face Amount of outstanding Bankers' Acceptances and Letters of Credit); and
 - (d) fourth, to such Borrower or as any court of competent jurisdiction may otherwise direct.
- (4) *Pro Rata Basis.* All payments of principal, interest and fees herein set forth, unless otherwise expressly stipulated, shall be made for the account of, and distributed by the Applicable Agent to, the Lenders on the basis of their respective Rateable Portions thereof. The Administrative Agent shall distribute payments of fees under section 2.6 for the account of Lenders who are members of the same Lender Group to the Canadian Lender in such Lender Group acting as agent for the other members of such Lending Group, and such payment shall satisfy the Administrative Agent's obligations to distribute such payment to all members of such Lender Group and such

Canadian Lender shall thereafter be solely responsible for any further payment to other members of such Lender Group.

- (5) *Netting.* If on any date liquidated amounts (other than interest and fees) would be payable under this agreement in the same currency by the relevant Borrower to certain Lenders and by such Lenders to such Borrower, then on such date, at the election of and upon notice from the Applicable Agent stating that netting is to apply to such payments, each such party's obligations to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by such Borrower to such Lenders exceeds the aggregate amount that would otherwise have been payable by such Lenders to such Borrower or vice versa, such obligations shall be replaced by an obligation upon such Borrower or such Lenders by whom the larger aggregate amount would have been payable to pay to the other the excess of the larger aggregate amount over the smaller aggregate amount.
- (6) *Payments Free of Set-off.* Except as set forth in section 2.4(5), each payment made by a Borrower on account of the Obligations shall be made without set-off or counterclaim.

2.5 Computations.

- (1) *Basis.* All computations of:
 - (a) interest based on the Prime Rate, the Base Rate, the CDOR Rate or (in respect of LIBOR Advances denominated in Sterling) LIBOR shall be made by the Administrative Agent on the basis of a year of 365 days or, in the case of a leap year other than with respect to the said LIBOR Advances, 366 days and the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable; and
 - (b) interest based on (in respect of LIBOR Advances denominated in US Dollars or Euros) LIBOR or the US Prime Rate shall be made by the Applicable Agent on the basis of a year of 360 days and the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable.

Computations of fees under sections 2.6(a) and (b), 4.6 and 5.8(1) and (2) shall be made by the Applicable Agent on the basis of a year of 365 days or, in the case of a leap year and only with respect to fees under sections 2.6(a) and (b) and 5.8(1) and (2), 366 days and the actual number of days (including the first day but excluding the last day) occurring in the period for which such fees are payable. Each determination by the Applicable Agent of an amount of interest, Discount Proceeds or fees payable by the relevant Borrower hereunder shall be conclusive and binding for all purposes, absent demonstrated error.

- (2) *Interest Act* (Canada). For purposes of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest based on (in respect of LIBOR Advances denominated in US Dollars or Euros) LIBOR or the US Prime Rate is equivalent may be determined by multiplying the applicable rate by a fraction, the numerator of which is the number of days to the same calendar date in the next calendar year (or 365 days if the calculation is made as of February 29) and the denominator of which is 360.

2.6 Fees. Finning shall pay to the Administrative Agent the following fees, calculated as follows:

- (a) a standby fee (for the account of the Lenders on the basis of their respective Commitments) payable in Canadian Dollars quarterly in arrears on the first Business Day of the first month following the end of each Financial Quarter, and on the Maturity Date, calculated from the date hereof on a daily basis on the difference between the aggregate Canadian Dollar Equivalent Principal Outstanding under the Credit Facility (including Swingline Advances, based on the information provided by the Swingline Lender to the Administrative Agent) and the aggregate Commitments, at the rate set forth in the definition of Applicable Margin;
- (b) the agency fees (for the account of the Administrative Agent) agreed with the Administrative Agent, payable as and when payable under that agreement; and
- (c) the upfront fees agreed with the Administrative Agent, payable on the Amendment and Restatement Closing Date.

2.7 Interest on Overdue Amounts. Except as otherwise provided in this agreement, each amount owed by a Borrower to an Agent or a Lender which is not paid when due (whether at stated maturity, on demand, by acceleration or otherwise) shall bear interest (both before and after maturity, default and judgment), from the date on which such amount is due until such amount is paid in full, payable on demand, at a rate per annum equal at all times to the rate applicable to the amount overdue (or, if no such rate is applicable, the Base Rate (in the case of amounts denominated in US Dollars), SBR as defined below (in the case of amounts denominated in Sterling), EONIA as defined below (in the case of amounts denominated in Euros) or the Prime Rate (in the case of amounts denominated in Canadian Dollars)), in each case plus the Applicable Margin plus a further two (2%) percent per annum plus (if such amount relates to a LIBOR Advance denominated in Euros or Sterling) the Mandatory Costs Rate. In this section 2.7:

- (a) "EONIA" means the Euro Overnight Index Average, being the weighted average of all overnight unsecured lending transactions in the European interbank market initiated within the euro area by the EURIBOR Panel Banks, as determined by the European Agent in accordance with customary market practices ; and

- (b) "SBR" means the rate which the principal office of the European Agent in London, England announces from time to time as its "base rate" and which is its reference rate of interest for loans in Sterling to its United Kingdom borrowers.

2.8 Agent's Discretion on Allocation. In the event that it is not practicable to:

- (a) allocate an Accommodation on the basis of the Lenders' respective Rateable Portions in accordance with section 3.2 or 4.1(2) by reason of the occurrence of circumstances described in Article 9; or
- (b) allocate a Drawing among the Lenders in accordance with section 4.1(2) by reason of the need to ensure that the aggregate amount of Bankers' Acceptances required to be accepted hereunder complies with the minimum amounts or increments set forth in section 2.1(4);

the Applicable Agent is authorized by the relevant Borrower and each Lender to make such allocation as the Applicable Agent determines in its sole and unfettered discretion may be equitable in the circumstances, subject in all cases to section 2.1. All fees in respect of any such Drawing, and fees payable under section 2.6(a), shall be adjusted, as among the Lenders, by the Applicable Agent accordingly.

2.9 Funding. Unless the Applicable Agent shall have received notice from a Lender prior to the proposed date of any advance of funds that such Lender will not make available to such Agent such Lender's share of such advance, such 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 relevant Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable advance available to the Applicable Agent, then the applicable Lender shall pay to such 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 relevant Borrower to but excluding the date of payment to such Agent, at a rate determined by such Agent in accordance with prevailing banking industry practice on interbank compensation. If such Lender pays such amount to such Agent, then such amount shall constitute such Lender's Accommodation included in such advance. If the Lender does not do so forthwith, the relevant Borrower shall pay to such Agent forthwith on demand such corresponding amount with interest thereon at the interest rate applicable to the advance in question. Any payment by such Borrower shall be without prejudice to any claim such Borrower may have against a Lender that has failed to make such payment to the Applicable Agent.

Unless the Applicable Agent shall have received notice from the relevant Borrower prior to the date on which any payment is due to such Agent for the account of any Lender hereunder that such Borrower will not make such payment, such Agent may assume that such 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 such Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to such 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 such Agent, at a rate determined by such Agent in accordance with prevailing banking industry practice on interbank compensation.

2.10 Rollover and Conversion.

- (1) *General.* Subject to the terms and conditions of this agreement, a Borrower may from time to time request that any Drawing or type of Borrowing or any portion thereof be rolled over or converted in accordance with the provisions hereof.
- (2) *Request.* Each request by a Borrower for a Rollover or Conversion shall be made by the delivery of a duly completed and executed Accommodation Request to the Applicable Agent with the Required Notice and the provisions of Article 3 or Article 4 shall apply to each request for a Rollover or Conversion as if such request were a request thereunder for an Advance or a Drawing (as the case may be).
- (3) *Effective Date.* Each Rollover or Conversion of a CDOR Rate Advance, a LIBOR Advance or Bankers' Acceptance shall be made effective as of, in the case of a CDOR Rate Advance or LIBOR Advance, the last day of the subsisting Interest Period and, in the case of a Bankers' Acceptance, the maturity date applicable thereto.
- (4) *Failure to Elect.* If a Borrower does not deliver an Accommodation Request at or before the time required by section 2.10(2) and:
 - (a) in the case of a Bankers' Acceptance fails to give the Required Notice that it will pay to the Administrative Agent for the account of the applicable Lender the Face Amount thereof on the maturity date or if such Borrower gives such notice but fails to act in accordance with it, such Borrower shall be deemed to have requested a Conversion of the Face Amount thereof to a Prime Rate Advance and all of the provisions hereof relating to a Prime Rate Advance shall apply thereto; or
 - (b) in the case of a CDOR Rate Advance or LIBOR Advance, fails to give the Required Notice that it will pay to the Applicable Agent for the account of the applicable Lender the principal amount thereof at the end of the relevant Interest Period or if such Borrower gives such notice but fails to act in accordance with it, such Borrower shall be deemed to have requested a Rollover of such Advance to a CDOR Rate Advance or LIBOR Advance (as applicable) having an Interest Period of one month (and all of the provisions hereof applicable to CDOR Rate Advances or LIBOR Advances, as applicable, shall apply thereto).

- (5) *Continuing Obligation.* A Rollover or Conversion shall not constitute a repayment of the relevant Accommodation or a re-borrowing by the relevant Borrower but shall result in a change in the basis of calculation of interest, discounts or fees (as the case may be) for, and/or currency of, such Accommodation. However, where a Conversion takes place from one currency to another, the same may be effected only by the relevant Borrower repaying the entire Principal Outstanding under the existing Advance (together with all accrued and unpaid interest thereon), in the currency of such existing Advance, and receiving the proceeds of the new Advance in the currency of such new Advance.
- (6) *Limit.* Notwithstanding any other provision of this agreement, at no time shall there be more than 30 separate maturity dates, in aggregate, for all CDOR Rate Advances, LIBOR Advances and Bankers' Acceptances outstanding under the Credit Facility.

ARTICLE 3 ADVANCES

3.1 Advances.

- (1) *Commitment.* Each Lender agrees (on a several basis with the other Lenders, up to the amount of such Lender's Commitment thereunder), on the terms and conditions herein set forth, from time to time on any Business Day, to make Advances under the Credit Facility prior to the cancellation or termination thereof.
- (2) *Amounts.* The aggregate principal amount of each Borrowing shall comply with section 2.1(4).

3.2 Making the Advances.

- (1) *Notice.* Each Borrowing shall be made on the Required Notice given not later than 1:00 p.m. (Local Time) (except, in the case of a LIBOR Advance (Europe) in Sterling and a CDOR Rate Advance (Europe) in Canadian Dollars, given not later than 11:00 a.m. (Local Time)) by a Borrower to the Applicable Agent (except as otherwise provided with respect to Swingline Advances in section 2.1(6)), and the Applicable Agent shall give to each Lender prompt notice thereof and of such Lender's Rateable Portion of each type of Borrowing to be made under the Borrowing. Each such notice of a Borrowing shall be given by way of an Accommodation Request or by telephone (confirmed promptly in writing), with the same information as would be contained in an Accommodation Request, including the requested date of such Borrowing and the aggregate amount of each type of Borrowing comprising such Borrowing.
- (2) *Lender Funding.* Each Lender shall, before noon (Local Time) on the date of the requested Borrowing, deposit to the relevant Payment Account in same

day funds in the applicable currency such Lender's Rateable Portion of each type of Borrowing comprising such Borrowing. Promptly upon receipt by the Applicable Agent of such funds and upon fulfilment of the applicable conditions set forth in Article 6, the Applicable Agent will make such funds available to the relevant Borrower by debiting such account (or causing such account to be debited), and by crediting such account of such Borrower as shall be agreed with the Applicable Agent (or causing such account to be credited) with such Advances.

3.3 Interest on Advances. Each Borrower shall pay interest on the unpaid principal amount of each Advance made to such Borrower at the following rates per annum:

- (1) *Prime Rate Advances.* If and so long as such Advance is a Prime Rate Advance, at a rate per annum equal at all times to the sum of the Prime Rate in effect from time to time plus the Applicable Margin, calculated on the daily principal amount outstanding under such Prime Rate Advance and payable in Canadian Dollars in arrears:
 - (a) monthly on the first Business Day of each month with respect to the previous calendar month (calculated as at the last day of such previous calendar month); and
 - (b) when such Prime Rate Advance becomes due and payable in full.
- (2) *Base Rate Advances.* If and so long as such Advance is a Base Rate Advance, at a rate per annum equal at all times to the sum of the Base Rate in effect from time to time plus the Applicable Margin, calculated on the daily principal amount outstanding under such Base Rate Advance and payable in US Dollars in arrears:
 - (a) monthly on the first Business Day of each month with respect to the previous calendar month (calculated as at the last day of such previous calendar month); and
 - (b) when such Base Rate Advance becomes due and payable in full.
- (3) *US Prime Rate Advances.* If and so long as such Advance is a US Prime Rate Advance, at a rate per annum equal at all times to the sum of the US Prime Rate in effect from time to time plus the Applicable Margin, calculated on the daily principal amount outstanding under such US Prime Rate Advance and payable in US Dollars in arrears:
 - (a) monthly on the first Business Day of each month with respect to the previous calendar month (calculated as at the last day of such previous calendar month); and
 - (b) when such US Prime Rate Advance becomes due and payable in full.

- (4) *CDOR Rate Advances.* If and so long as such Advance is a CDOR Rate Advance, at a rate per annum equal at all times during each Interest Period for such CDOR Rate Advance to the sum of the CDOR Rate for such Interest Period plus the Applicable Margin, calculated on the daily principal amount outstanding under such CDOR Rate Advance and payable in Canadian Dollars:
- (a) at the end of each Interest Period (except where such Interest Period exceeds three months in duration, in which case such interest shall be payable on the dates falling every three months following the commencement of the Interest Period and, finally, at the end of such Interest Period); and
 - (b) when such CDOR Rate Advance becomes due and payable in full.
- (5) *LIBOR Advances.* If and so long as such Advance is a LIBOR Advance, at a rate per annum equal at all times during each Interest Period for such LIBOR Advance to the sum of LIBOR for such Interest Period plus the Applicable Margin plus (if such LIBOR Advance is denominated in Euros or Sterling) the Mandatory Costs Rate, calculated on the daily principal amount outstanding under such LIBOR Advance and payable in (as the case may be) US Dollars, Euros or Sterling:
- (a) at the end of each Interest Period (except where such Interest Period exceeds three months in duration, in which case such interest shall be payable on the dates falling every three months following the commencement of the Interest Period and, finally, at the end of such Interest Period); and
 - (b) when such LIBOR Advance becomes due and payable in full or (in the case of a LIBOR Advance denominated in US Dollars) is converted to a Base Rate Advance or a US Prime Rate Advance.

ARTICLE 4 BANKERS' ACCEPTANCES

4.1 Acceptances.

- (1) *Commitment.* Subject to section 4.11, each Lender agrees (on a several basis with the other Lenders, up to the amount of such Lender's Commitment), on the terms and conditions herein set forth, from time to time on any Business Day, to accept and purchase Bankers' Acceptances of Canadian Borrowers under the Credit Facility prior to the cancellation or termination thereof.
- (2) *Amounts.* Each Drawing shall be in an aggregate Face Amount not less than the minimum amount (or requisite multiple in excess thereof) set forth in section 2.1(4) and shall consist of the creation by the relevant Canadian Borrower of Bankers' Acceptances on the same day, effected or arranged by

the Lenders in accordance with section 4.4, rateably according to their respective Commitments.

4.2 Drawdown Request.

- (1) *Notice.* Each Drawing shall be made on the Required Notice given not later than 1:00 p.m. (Local Time) by the relevant Borrower to the Administrative Agent and the Administrative Agent shall give to each Lender prompt notice thereof (including the marketing Option as set forth in section 4.5) and of such Lender's Rateable Portion thereof. Each such notice of a Drawing shall be given by way of an Accommodation Request or by telephone (confirmed promptly in writing) with the same information as would be contained in an Accommodation Request, including the requested Drawing Date, the Face Amounts of the Drawing and the marketing Option as set forth in section 4.5.
- (2) *Maturity.* The relevant Borrower shall not request in an Accommodation Request a term for Bankers' Acceptances under the Credit Facility which would end on a day after the Maturity Date, nor on any date that would, in the opinion of the Administrative Agent, conflict with any repayment stipulated herein.

4.3 Form of Bankers' Acceptances.

- (1) *Form.* Each Bankers' Acceptance shall:
 - (a) be in a Face Amount allowing for conformance with section 2.1(4);
 - (b) be dated the Drawing Date;
 - (c) mature and be payable by the relevant Borrower (in common with all other Bankers' Acceptances created in connection with such Drawing) on a Business Day which occurs one, two, three or six months after the date thereof, subject to availability; and
 - (d) be in a form satisfactory to the relevant Lenders.
- (2) *Applicability of DBNA.* It is the intention of the parties that each Bankers' Acceptance accepted by a Lender under this agreement shall be issued in the form of a "depository bill" (as that term is defined in the *Depository Bills and Notes Act* (Canada) (the "**DBNA**")), be deposited with CDS Clearing and Depository Services Inc. and be made payable to "CDS & Co." The Administrative Agent and the Lenders shall effect the following practices and procedures and, subject to the approval of the Majority Lenders, establish and notify the Canadian Borrowers and the Lenders of any additional procedures, consistent with the terms of this agreement and the requirements of the DBNA, as are reasonably necessary to accomplish this intention:

- (a) each Bankers' Acceptance accepted and purchased by a Lender hereunder shall have marked prominently and legibly on its face and within its text, at or before the time of issue, the words "This is a depository bill subject to the Depository Bills and Notes Act";
 - (b) any reference to authentication of that Bankers' Acceptance will be removed; and
 - (c) that Bankers' Acceptance shall not be marked with any words prohibiting negotiation, transfer or assignment of it or of an interest in it.
- (3) *Grace.* Each relevant Borrower hereby waives presentment for payment and any other defence to payment of any amounts due in respect of any Bankers' Acceptance, and hereby renounces, and shall not claim, any days of grace for the payment of any Bankers' Acceptance.

4.4 Completion of Bankers' Acceptance. Upon receipt of the notice from the Administrative Agent pursuant to section 4.2(1), each Lender is thereupon authorized to execute Bankers' Acceptances as the duly authorized attorney of the relevant Borrower pursuant to section 4.8, in accordance with the particulars provided by the Administrative Agent.

4.5 Bankers' Acceptance Marketing. In each Accommodation Request for a Drawing, the relevant Borrower shall elect one of the marketing options (in this Article 4, each an "Option") described in this section 4.5. Such Borrower may elect to market Bankers' Acceptances as follows:

(1) Option #1

- (a) On the relevant Drawing Date, such Borrower shall obtain quotations regarding the sale of the Bankers' Acceptances to be accepted by the Lenders and shall accept such of the offers as it deems appropriate, but in any event shall accept offers equal to the full amount of the Bankers' Acceptances to be accepted by the Lenders in respect of the Drawing.
- (b) Such Borrower shall provide the Administrative Agent with details regarding the sale of the Bankers' Acceptances described in (1)(a) above whereupon the Administrative Agent shall promptly notify the Lenders of:
 - (i) the identity of the purchasers of such Bankers' Acceptances;
 - (ii) the amounts being purchased by such purchasers;
 - (iii) the discount rate transacted by such Borrower and such purchasers;

- (iv) the net cash proceeds realized from the purchase and sale of such Bankers' Acceptances; and
- (v) the stamping fees applicable to such Drawing as set forth in section 4.6;

(including each Lender's Rateable Portion thereof).

(2) Option #2

- (a) On the relevant Drawing Date, such Borrower shall obtain quotations regarding the sale of the Bankers' Acceptances to be accepted by Lenders that are Schedule I Banks and shall accept such of the offers in respect of such Lenders' Bankers' Acceptances as it deems appropriate, but in any event shall accept offers equal to the full amount of the Bankers' Acceptances to be accepted by such Lenders in respect of the Drawing. The provisions of (1)(b) above (Option #1) shall apply in such circumstances, mutatis mutandis.
- (b) With respect to Bankers' Acceptances to be accepted by Lenders that are not Schedule I Banks, either or both of the following options:
 - (i) each Lender that is not a Schedule I Bank shall purchase all Bankers' Acceptances accepted by it on the relevant Drawing Date at the Discount Rate; or
 - (ii) on the relevant Drawing Date, such Borrower shall obtain quotations regarding the sale of the Bankers' Acceptances to be accepted by Lenders that are not Schedule I Banks and shall accept such of the offers in respect of such Lenders' Bankers' Acceptances as it deems appropriate; the provisions of (1)(b) above (Option #1) shall apply in such circumstances, mutatis mutandis.

(3) Option #3

- (a) Each Lender that is a Schedule I Bank shall purchase all Bankers' Acceptances accepted by it on the relevant Drawing Date at the Discount Rate.
- (b) With respect to Bankers' Acceptances to be accepted by Lenders that are not Schedule I Banks, either or both of the following options:
 - (i) each Lender that is not a Schedule I Bank shall purchase all Bankers' Acceptances accepted by it on the relevant Drawing Date at the Discount Rate; or

- (ii) on the relevant Drawing Date, such Borrower shall obtain quotations regarding the sale of the Bankers' Acceptances to be accepted by Lenders that are not Schedule I Banks and shall accept such of the offers in respect of such Lenders' Bankers' Acceptances as it deems appropriate; the provisions of (1)(b) above (Option #1) shall apply in such circumstances, mutatis mutandis.

(4) Option #4

Each Lender shall purchase all Bankers' Acceptances accepted by it on the relevant Drawing Date at the Discount Rate.

Each Lender shall, for same day value on the Drawing Date specified by the relevant Borrower in the applicable Accommodation Request, credit the relevant Payment Account (for the account of such Borrower) with (as applicable):

- (1) the applicable Discount Proceeds of the Bankers' Acceptances purchased by that Lender; and
- (2) the net cash proceeds realized from the purchase of such Bankers' Acceptances by a person that is not a Lender;

in each case less the stamping fee set forth in section 4.6. Promptly upon receipt by the Administrative Agent of such funds and upon fulfilment of the applicable conditions set forth in Article 6, the Administrative Agent will make such funds available to such Borrower by debiting such account (or causing such account to be debited), and by crediting such account as shall be agreed with such Borrower (or causing such account to be credited) with such Discount Proceeds and net cash proceeds less such stamping fee.

Each Lender may at any time and from time to time purchase, hold, sell, rediscount or otherwise dispose of any Bankers' Acceptance and no such dealing shall prejudice or impair the relevant Borrower's obligations under section 4.7.

4.6 Stamping Fee. The relevant Borrower shall pay to the Administrative Agent in respect of each Drawing (for the account of the Lenders on the basis of their respective Rateable Portions) a stamping fee in Canadian Dollars. Such stamping fee shall be payable by such Borrower in full on the Drawing Date, and shall be calculated on the Face Amount of such Bankers' Acceptances on the basis of the number of days in the term of such Bankers' Acceptances (including the Drawing Date but excluding the maturity date) at a rate per annum equal to the applicable percentage set forth under "Bankers' Acceptances" in the definition of Applicable Margin.

4.7 Payment at Maturity. The relevant Borrower shall pay to the Administrative Agent, and there shall become due and payable, on the maturity date for each Bankers' Acceptance an amount in same day funds equal to the Face Amount of the Bankers' Acceptance. Such Borrower shall make each payment hereunder in respect of Bankers' Acceptances by deposit of the required funds to the relevant Payment Account. Upon receipt of such payment, the

Administrative Agent will promptly thereafter cause such payment to be distributed to the Lenders on the basis of their Rateable Portions. Such payment to the Administrative Agent shall satisfy such Borrower's obligations under a Bankers' Acceptance to which it relates and the accepting institution shall thereafter be solely responsible for the payment of such Bankers' Acceptance.

4.8 Power of Attorney Respecting Bankers' Acceptances. In order to facilitate issues of Bankers' Acceptances pursuant to this agreement, each Canadian Borrower authorizes each Lender, and for this purpose appoints each Lender its lawful attorney (with full power of substitution), to complete, sign and endorse drafts issued in accordance with section 4.4 on its behalf in handwritten or by facsimile or mechanical signature or otherwise and, once so completed, signed and endorsed, and following acceptance of them as Bankers' Acceptance under this agreement, then purchase, discount or negotiate such Bankers' Acceptances in accordance with the provisions of this Article 4. Drafts so completed, signed, endorsed and negotiated on behalf of such Borrower by any Lender shall bind such Borrower as fully and effectively as if so performed by an authorized officer of such Borrower.

No such Lender shall be liable for any damage, loss or other claim arising by reason of any loss or improper use of any draft or Bankers' Acceptances executed in blank except any such damage, loss or claim arising by reason of the gross negligence, wilful misconduct or fraud of such Lender or its officers, employees, agents or representatives or arising by reason of such Lender or its officers, employees, agents or representatives failing to exercise such care in the custody and safekeeping of such draft or Bankers' Acceptances as it would exercise in the custody and safekeeping of similar property owned by it.

4.9 Prepayments. Except as required by section 2.2(2), 4.10 or 9.4, no payment of the Face Amount of a Bankers' Acceptance shall be made by the relevant Borrower to a Lender prior to the maturity date thereof. Any such required payment made before the applicable maturity date shall be held by the Administrative Agent in a cash collateral account and invested in Cash Equivalents as directed by the Administrative Agent as security to provide for or to secure payment of the Face Amount of such outstanding Bankers' Acceptance upon maturity, and the relevant Borrower hereby irrevocably authorizes and directs the Administrative Agent to apply such amount on the maturity date for the relevant Drawing to the repayment of the relevant Bankers' Acceptance. Interest on amounts held on deposit by the Administrative Agent for such deposits shall be paid to the relevant Borrower on the maturity date for the relevant Drawing; provided that, if an Event of Default has occurred, such interest shall be retained by the Administrative Agent and applied to the Obligations. Any such required payment made before the applicable maturity date by such Borrower to the Administrative Agent, to the extent of the amount thereof, shall satisfy such Borrower's obligations under the Bankers' Acceptance to which it relates as to a like amount. The accepting institution shall thereafter be solely responsible for the payment of the Bankers' Acceptance and shall indemnify and hold such Borrower harmless against any liabilities, costs or expenses incurred by such Borrower as a result of any failure by such Lender to pay the Bankers' Acceptance as to such like amount in accordance with its terms.

4.10 Default. Upon the occurrence of an Event of Default and the Administrative Agent declaring the Obligations to be due and payable pursuant to section 10.2, and

notwithstanding the date of maturity of any outstanding Bankers' Acceptances, an amount equal to the Face Amount of all outstanding Bankers' Acceptances which the Lenders are required to honour shall thereupon forthwith become due and payable by the relevant Borrower to the Administrative Agent. Any such monies received by the Administrative Agent shall be dealt with as set forth in section 4.9.

4.11 Non-Acceptance Lenders. The parties acknowledge that a Lender (a "**Non-Acceptance Lender**") may not be permitted by Applicable Law to, or may not by virtue of customary market practices, stamp or accept commercial drafts. A Non-Acceptance Lender shall, in lieu of accepting and purchasing Bankers' Acceptances, make a BA Equivalent Advance. The amount of each BA Equivalent Advance shall be equal to the Discount Proceeds which would be realized from a hypothetical sale of those Bankers' Acceptances which that Non-Acceptance Lender would otherwise be required to accept and purchase as part of such Drawing. To determine the amount of those Discount Proceeds, the hypothetical sale shall be deemed to take place at the Non-Acceptance Discount Rate for that BA Equivalent Advance. Any BA Equivalent Advance shall be made on the relevant Drawing Date, and shall remain outstanding for the term of the relevant Bankers' Acceptances. For greater certainty, concurrently with the making of a BA Equivalent Advance, a Non-Acceptance Lender shall be entitled to deduct therefrom an amount equal to the stamping fee which that Lender would otherwise be entitled to receive pursuant to section 4.6 as part of that BA Equivalent Advance if that BA Equivalent Advance was a Bankers' Acceptance, based on the amount of principal and interest payable on the maturity date of that BA Equivalent Advance. On the maturity date for the Bankers' Acceptances required by the relevant Borrower, such Borrower shall pay to each Non-Acceptance Lender the amount of such Lender's BA Equivalent Advance plus interest on the principal amount of that BA Equivalent Advance calculated at the applicable Non-Acceptance Discount Rate (in effect the date such BA Equivalent Advance was made) from the date of acceptance to but excluding the maturity date of that BA Equivalent Advance.

ARTICLE 5 LETTERS OF CREDIT

5.1 Letters of Credit Commitment. Each Lender agrees (on a several basis with the other Lenders up to the amount of such Lender's Commitment), on the terms and conditions herein set forth, from time to time on any Business Day, to issue Letters of Credit under the Credit Facility, for the account of the relevant Borrower prior to the cancellation or termination thereof; provided that at no time shall the C\$ Equivalent Principal Outstanding with respect to the Face Amount of outstanding Letters of Credit exceed collectively C\$100 million.

Letters of Credit shall be issued by way of, as selected by the relevant Borrower, either:

- (a) a Letter of Credit (a "**Fronted Letter of Credit**") issued by the Issuing Bank on behalf of the Lenders on a "fronting" basis as contemplated by section 5.2; or
- (b) a Letter of Credit (a "**POA Letter of Credit**") issued by the Applicable Agent as attorney of the Lenders in accordance with section 5.3.

As used in this Article 5, the term "LC issuer" means, as the context requires, either the Issuing Bank as issuer of a Fronted Letter of Credit or the Applicable Agent as the issuer of a POA Letter of Credit.

5.2 Fronted Letters of Credit. In the event that a Fronted Letter of Credit shall be issued on behalf of the Lenders by the Issuing Bank:

- (a) the Principal Outstanding in respect of such Letter of Credit shall be considered to be allocated among the Lenders on the basis of their respective Rateable Portions, and on the basis that each such Lender is liable to, and by entering into this agreement agrees to, indemnify and hold harmless the Issuing Bank in relation to the Issuing Bank's liability as issuer of such Letter of Credit to the extent of the amount of such Rateable Portion of such liability;
- (b) for greater certainty and without limiting the generality of section 12.1, the Principal Outstanding among the Lenders shall be adjusted in the circumstances and in the manner contemplated by section 12.1 in order to reflect the Issuance by the Issuing Bank on behalf of such Lenders.

5.3 POA Letters of Credit. The provisions of this section 5.3 shall apply to POA Letters of Credit.

- (1) *Issuance on behalf of Lenders.* Each POA Letter of Credit shall be issued by the Applicable Agent on behalf of all Lenders as a single multi-Lender Letter of Credit, but the obligation of each Lender thereunder shall be several, and not joint, based upon its share (on the basis of its Rateable Portion) in effect on the date of issuance of such POA Letter of Credit, subject to any changes resulting from a change in such Rateable Portion after the date of issuance of the POA Letter of Credit that are effected in accordance with the terms of the POA Letter of Credit. Each POA Letter of Credit shall include the provisions contained in, and shall be substantially in the form of, schedule 8 annexed hereto, and shall otherwise be in a form satisfactory to the Applicable Agent. Without the unanimous consent of the Lenders, no POA Letter of Credit shall be issued which varies the several and not joint nature of the liability of each Lender thereunder.
- (2) *Applicable Agent as Agent and Attorney.* Each POA Letter of Credit shall be executed and delivered by the Applicable Agent in the name and on behalf of, and as attorney-in-fact for, each Lender party to such Letter of Credit. The Applicable Agent shall act under each POA Letter of Credit as the agent of each Lender to:
 - (a) receive documents presented by the Beneficiary under such POA Letter of Credit;

- (b) determine whether such documents are in compliance with the terms and conditions of such POA Letter of Credit; and
 - (c) notify such Lender and the relevant Borrower that a valid drawing has been made and the date that the related payment under such POA Letter of Credit is to be made; provided that the Applicable Agent (in such capacity) shall have no obligation or liability for any payment to be made under any POA Letter of Credit and each POA Letter of Credit shall expressly so provide.
- (3) *Power of Attorney.* Each Lender hereby appoints and designates the Applicable Agent as its attorney-in-fact, acting through any duly authorized officer of the Applicable Agent, to execute and deliver each POA Letter of Credit to be issued by such Lender hereunder (and any amendment thereof) in the name and on behalf of such Lender. Each Lender shall furnish to the Applicable Agent a power of attorney in the form of schedule 9 annexed hereto, which may be presented as evidence of the Applicable Agent's power to act but which shall not, as between the Lender and the Applicable Agent, vary the power of the Applicable Agent as established in this agreement. In addition, promptly upon the request of the Applicable Agent, each Lender will furnish to the Applicable Agent such other evidence as any Beneficiary of any POA Letter of Credit may reasonably request in order to demonstrate that the Applicable Agent has the power to act as attorney-in-fact for such Lender to execute and deliver such POA Letter of Credit (and any amendment thereof). The Borrowers and the Lenders agree that each POA Letter of Credit shall provide that all documents presented thereunder shall be delivered to the Applicable Agent and that all payments thereunder shall be made by the Lenders obligated thereon through the Applicable Agent. Each Lender shall be severally liable under each POA Letter of Credit in proportion to its Rateable Portion on the date of issuance of such POA Letter of Credit, subject to any changes resulting from a change in such Rateable Portion after the date of issuance of the POA Letter of Credit that are effected in accordance with the terms of the POA Letter of Credit, and each POA Letter of Credit shall specify each Lender's Rateable Portion of the amount payable thereunder.
- (4) *Documents and Payment Demands.* The Borrowers and each Lender hereby authorize the Applicable Agent to review on behalf of each Lender each document presented under each POA Letter of Credit. The determination of the Applicable Agent as to the conformity of any documents presented under a POA Letter of Credit to the requirements of such POA Letter of Credit shall be conclusive and binding on the relevant Borrower and each Lender; provided that the Applicable Agent acts in accordance with the standards of reasonable care specified in the Uniform Customs. The Applicable Agent shall, within a reasonable time following its receipt thereof, examine all documents purporting to represent a demand for payment under any POA

Letter of Credit. The Applicable Agent shall promptly after such examination:

- (a) notify each of the Lenders obligated under such POA Letter of Credit and the relevant Borrower by telephone (confirmed in writing) of such demand for payment and of each Lender's Rateable Portion of such payment;
 - (b) deliver to each Lender and the relevant Borrower a copy of each document purporting to represent a demand for payment under such POA Letter of Credit; and
 - (c) notify each Lender and the relevant Borrower whether the demand for payment was properly made under such POA Letter of Credit.
- (5) *Drawings.* With respect to any drawing determined by the Applicable Agent to have been properly made under a POA Letter of Credit, each Lender will make a payment under the POA Letter of Credit in accordance with its liability under the POA Letter of Credit and this agreement. The payment shall be made to the Payment Account or such other account as the Applicable Agent designates by notice to the Lenders. The Applicable Agent will promptly make any such payment available to the Beneficiary of such POA Letter of Credit. Promptly following any payment by any Lender in respect of any POA Letter of Credit, the Applicable Agent will notify the relevant Borrower of such payment, but any failure to give or delay in giving such notice shall not relieve such Borrower of its obligation to reimburse the Lenders with respect to any such payment. The responsibility of the Applicable Agent and the Lenders in connection with any document presented for payment under any POA Letter of Credit shall, in addition to any payment obligation expressly provided in such POA Letter of Credit, be limited to determining that the documents delivered under such Letter of Credit in connection with such presentment are in conformity with such POA Letter of Credit. The Applicable Agent shall not be required to make any payment under a POA Letter of Credit in excess of the amount received by it from the Lenders for such payment.
- (6) *Reimbursement by Borrower.* Section 5.7 shall apply in respect of all amounts paid to a Beneficiary upon a drawing under a POA Letter of Credit.
- (7) *Notice regarding Potential Automatic Renewal.* Without limiting the other provisions of this agreement, if at any time within the 30 day period before any applicable deadline for notifying the Beneficiary of a POA Letter of Credit that it will not be renewed, a Default or an Event of Default exists, the Applicable Agent shall promptly notify Beneficiary (with a copy to the Lenders) that such POA Letter of Credit will not be renewed, in order to avoid automatic renewal in accordance with the terms of the POA Letter of Credit.

5.4 Notice of Issuance.

- (1) *Notice.* Each Issuance shall be made on the Required Notice, given in the form of an Accommodation Request not later than 1:00 p.m. (Local Time) by the relevant Borrower to the Applicable Agent. The Applicable Agent shall give prompt notice to the Lenders of their Rateable Portion of such Issuance.
- (2) *Other Documents.* In addition, the relevant Borrower shall execute and deliver the LC issuer's customary form of letter of credit indemnity agreement; provided that, if there is any inconsistency between the terms of this agreement and the terms of such customary form of indemnity agreement, the terms of this agreement shall prevail.

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

- (a) be dated the Issue Date;
- (b) have an expiration date on a Business Day which occurs no more than 365 days after the Issue Date (provided that Letters of Credit may have a term in excess of 365 Days if all Lenders shall agree); and
- (c) comply with the definition of Letter of Credit and shall otherwise be satisfactory in form and substance to the LC issuer.

Except to the extent otherwise expressly provided herein or in another Credit Facility Document, the Uniform Customs or, as the case may be, ISP98 shall apply to and govern each Letter of Credit.

5.6 Procedure for Issuance of Letters of Credit.

- (1) *Issue.* On the Issue Date, the LC issuer will complete and issue one or more Letters of Credit in favour of the Beneficiary as specified by the relevant Borrower in its Accommodation Request.
- (2) *Time for Honour.* No Letter of Credit shall require payment against a conforming draft to be made thereunder on the same Business Day upon which such draft is presented, if such presentation is made after 11:00 a.m. (Local Time) on such Business Day.
- (3) *Text.* Prior to the Issue Date, the relevant Borrower shall specify a precise description of the documents and the verbatim text of any certificate to be presented by the Beneficiary prior to payment under the Letter of Credit. The LC issuer may require changes in any such documents or certificate, acting reasonably.
- (4) *Conformity.* In determining whether to pay under a Letter of Credit, the LC issuer shall be responsible only to determine that the documents and certificates required to be delivered under such Letter of Credit have been

delivered and that they comply on their face with the requirements of such Letter of Credit.

5.7 Payment of Amounts Drawn Under Letters of Credit.

- (1) *Obligation to Reimburse.* In the event of any request for a drawing under any Letter of Credit, the LC issuer may notify the relevant Borrower (with a copy of the notice to the Applicable Agent) on or before the date on which it intends to honour such drawing. Such Borrower (whether or not such notice is given) shall reimburse the LC issuer on demand by the LC issuer in Canadian Dollars, US Dollars, Euros, Sterling or such other currency, as the case may be, of an amount, in immediately available funds, equal to the amount of such drawing together with interest on such amount from and including the date of honouring such drawing until payment is made as if it were an Advance of the nature set forth in section 5.7(2) below (with an Interest Period or term of 30 days in the case of a LIBOR Advance).
- (2) *Deemed Advance.* Unless the relevant Borrower reimburses the LC issuer for the amount of such drawing prior to 10:00 a.m. (Local Time) on the fifth Business Day after such drawing (with concurrent advice to the Applicable Agent):
 - (a) such Borrower shall be deemed to have given an Accommodation Request to the Applicable Agent requesting the Lenders to make an Advance under the Credit Facility, on such fifth Business Day, in the form and in an amount (subject to the minimum amount for the requested Advance in accordance with section 2.1(4)) as follows
 - (i) in respect of a drawing in Canadian Dollars, a Prime Rate Advance in the amount of such drawing;
 - (ii) in respect of a drawing in US Dollars, a Base Rate Advance (except if such Borrower is US Borrower, then a US Prime Rate Advance, and if such Borrower is a European Borrower, then a LIBOR Advance) in the amount of such drawing;
 - (iii) in respect of a drawing in Euros or Sterling, a LIBOR Advance in the applicable currency in the amount of such drawing; and
 - (iv) in respect of a drawing in a currency other than Canadian Dollars, US Dollars, Euros or Sterling, a Prime Rate Advance in the Equivalent Amount in Canadian Dollars of such drawing; and
 - (b) subject to the terms and conditions of this agreement (including those set forth in Article 6), the Lenders shall make such Advance in accordance with Article 3 and such Borrower shall apply the proceeds

thereof (or required portion of such proceeds) to the reimbursement of the LC issuer for the amount of such drawing.

- (3) *Application of Reimbursement.* Any reimbursement payment (including interest) made to the LC issuer by the relevant Borrower shall be for the account of:
- (a) the Issuing Bank in the case of reimbursement of a draw under a Fronted Letter of Credit; and
 - (b) the Lenders, pro rata on the basis of their respective Rateable Portions, in the case of reimbursement of a draw under a POA Letter of Credit.

5.8 Fees.

- (1) *Issuance Fee.* The relevant Borrower shall pay to the Applicable Agent for the account of the Lenders a fee in respect of each Letter of Credit equal to that specified under "LCs" in the definition of "Applicable Margin" multiplied by an amount equal to the undrawn portion of the Face Amount of such Letter of Credit. Such fee shall be payable in the currency of issue in arrears, as follows:
- (a) the first payment shall be made on the last Business Day of the Financial Quarter in which the Issue Date occurs and shall be determined for a period equal to the number of days from the Issue Date until such last day; and
 - (b) each payment in respect of each following Financial Quarter shall be made on the date that is the earlier to occur of:
 - (i) the last Business Day of such Financial Quarter; and
 - (ii) the termination of such Letter of Credit;

and shall be determined for a period equal to the number of days from the first day of such Financial Quarter until such earlier date.

- (2) *Fronting Fee.* In addition, the relevant Borrower pay to the Applicable Agent for the account of the Issuing Bank a fronting fee in respect of each Fronted Letter of Credit issued by the Issuing Bank equal to []⁹ basis points per annum multiplied by an amount equal to the undrawn portion of the Face Amount of such Fronted Letter of Credit. Such fee shall be payable in the currency of issue in arrears, as follows:
- (a) the first payment shall be made on the last Business Day of the Financial Quarter in which the Issue Date occurs and shall be

⁹ Fee information redacted.

determined for a period equal to the number of days from the Issue Date until such last day; and

- (b) each payment in respect of each following Financial Quarter shall be made on the date that is the earlier to occur of:
 - (i) the last Business Day of such Financial Quarter; and
 - (ii) the termination of such Fronted Letter of Credit.
- (3) *Administrative Fee.* The relevant Borrower shall pay to the LC issuer, upon the issuance, amendment or transfer of each Letter of Credit, the LC issuer's standard documentary and administrative charges for issuing, amending or transferring standby or commercial letters of credit or letters of guarantee of a similar amount, term and risk.

5.9 Obligations Absolute. The obligation of the relevant Borrower to reimburse the LC issuer for drawings made under any Letter of Credit shall be unconditional and irrevocable and shall be fulfilled strictly in accordance with the terms of this agreement under all circumstances, including:

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

5.10 Indemnification; Nature of Lenders' Duties.

- (1) *Indemnity.* In addition to amounts payable as elsewhere provided in this Article 5, the relevant Borrower hereby agrees to protect, indemnify, pay and save the LC issuer and each Lender and their respective directors, officers, employees, agents and representatives harmless from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including legal fees and expenses) which the indemnitee may incur or be subject to as a consequence, direct or indirect, of:
 - (a) the issuance of any Letter of Credit, other than as a result of the breach of the standards of reasonable care specified in the Uniform Customs or where the LC issuer would not be entitled to the foregoing indemnification under ISP98, in each case as stated on its face to be applicable to such Letter of Credit; or
 - (b) the failure of the LC issuer to honour a drawing under any Letter of Credit as a result of any act or omission, whether rightful or wrongful, of any present or future *de jure or de facto* Official Body (all such acts or omissions called in this section 5.10, "**Government Acts**").
- (2) *Risk.* As between the relevant Borrower, on the one hand, and the LC issuer and the Lenders, on the other hand, such Borrower assumes all risks of the acts and omissions of, or misuse of the Letters of Credit issued hereunder by, the respective Beneficiaries of such Letters of Credit and, without limitation of the foregoing, neither the LC issuer nor any Lender shall be responsible for:
 - (a) the form, validity, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of such Letters of Credit, even if it should in fact prove to be in any or all respects invalid, inaccurate, fraudulent or forged;
 - (b) the invalidity or insufficiency of any instrument transferring or assigning or purporting to transfer or assign any such Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason;
 - (c) errors, omissions, interruptions or delays in transmission or delivery of any messages, by fax, electronic transmission, mail, cable, telegraph, telex or otherwise, whether or not they are in cipher;
 - (d) errors in interpretation of technical terms;
 - (e) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof;

- (f) the misapplication by the Beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; and
- (g) any consequences arising from causes beyond the control of the LC issuer, including any Government Acts.

None of the above shall affect, impair or prevent the vesting of any of the rights or powers of the LC issuer or the Lenders hereunder. No action taken or omitted by the LC issuer or any Lender under or in connection with any Letter of Credit issued by it or the related certificates (including without limitation actions taken or omitted by the LC issuer or any Lender in connection with the matters enumerated in sections 5.10(2)(a) to (e), inclusive), if taken or omitted in good faith, shall put the LC issuer or any Lender under any resulting liability to the relevant Borrower (provided that the LC issuer acts in accordance with the standards of reasonable care specified in the Uniform Customs and otherwise as may be required under ISP98, in each case as stated on its face to be applicable to the respective Letter of Credit).

5.11 Default, Maturity, etc. Upon the earlier of the Maturity Date and the Obligations becoming forthwith due and payable pursuant to section 10.2, and notwithstanding the expiration date of any outstanding Letters of Credit, an amount equal to the Face Amount of all outstanding Letters of Credit, and all accrued and unpaid fees owing by the relevant Borrower in respect of the Issuance of such Letters of Credit pursuant to section 5.8, if any, shall thereupon forthwith become due and payable by such Borrower to the Applicable Agent and, except for any amount payable in respect of unpaid fees as aforesaid, such amount shall be held in a trust account by the Applicable Agent and invested in Cash Equivalents as directed by the Administrative Agent and applied against amounts payable under such Letters of Credit in respect of any drawing thereunder.

The relevant Borrower shall pay to the Applicable Agent the aforesaid amount in respect of both any Letter of Credit outstanding hereunder and any Letter of Credit which is the subject matter of any order, judgment, injunction or other such determination (in this section 5.11, a "**Judicial Order**") restricting payment by the LC issuer under and in accordance with such Letter of Credit or extending the LC issuer's liability under such Letter of Credit beyond the expiration date stated therein. Payment in respect of each such Letter of Credit shall be due in the currency in which such Letter of Credit is stated to be payable.

Subject to section 2.4(5), the Applicable Agent shall with respect to each such Letter of Credit, upon the later of:

- (a) the date on which any final and non-appealable order, judgment or other such determination has been rendered or issued either terminating the applicable Judicial Order or permanently enjoining the LC issuer from paying under such Letter of Credit; and
- (b) the earlier of:

- (i) the date on which either the original counterpart of the Letter of Credit is delivered to the Applicable Agent for cancellation or the LC issuer is released by the Beneficiary from any further obligations in respect thereof; and
- (ii) the expiry (to the extent permitted by any Applicable Law) of such Letter of Credit;

pay to the relevant Borrower an amount equal to the difference between the amount paid to the Applicable Agent by such Borrower pursuant to this section 5.11 and the aggregate amount paid by the LC issuer under such Letter of Credit.

ARTICLE 6 CONDITIONS PRECEDENT

6.1 Closing Conditions. This Amendment and Restatement shall only become effective if and when the conditions precedent set forth in this section 6.1 have been satisfied, fulfilled or otherwise met to the satisfaction of (or waived in writing by) the Lenders on the Amendment and Restatement Closing Date and the Administrative Agent shall have issued to Finning a notice confirming the same.

- (1) *Documents.* The Credit Facility Documents (other than Bankers' Acceptances and Letters of Credit yet to be issued) shall have been executed and delivered to the Administrative Agent (including this Amendment and Restatement and the documents to be executed on or about the Amendment and Restatement Closing Date in respect of the Facility Guarantees).
- (2) *Charter Documents.* The Administrative Agent shall have received certified copies of the Charter Documents of each Borrower (together with, if any such documents are not in English, English translations of the same satisfactory to the Administrative Agent in its reasonable discretion), and a recent certificate of the secretary or an assistant secretary of each Borrower certifying that such copies of its Charter Documents remain true and complete copies of its Charter Documents.
- (3) *Resolutions.* The Administrative Agent shall have received certified copies of resolutions of the board of directors (or, where applicable, executive, audit or other relevant committee thereof) of each Borrower authorizing the execution, delivery and performance of each Credit Facility Document to which it is a party.
- (4) *Incumbency.* The Administrative Agent shall have received in respect of each Borrower where the resolution referred to in section 6.1(3) designates authorized signatories by reference to the offices in Finning held by such signatories, a recent certificate of the secretary or an assistant secretary of Finning certifying the names and the true signatures of the officers of Finning who have signed on behalf of such Borrower the Credit Facility Documents to which such Borrower is a party.

- (5) *Good Standing.* The Administrative Agent shall have received a recent certificate of good standing (or similar recent available certificate or confirmation) in respect of each Borrower for its jurisdiction of incorporation.
- (6) *Representations and Warranties.* All of the representations and warranties contained herein or in any other Credit Facility Document shall be true and correct in all material respects on and as of the Amendment and Restatement Closing Date as though made on and as of such date and the Administrative Agent shall have received a certificate of a Senior Officer so certifying to the Lenders.
- (7) *No Default.* No Default or Event of Default shall have occurred and be continuing on the Amendment and Restatement Closing Date, and the Administrative Agent shall have received a certificate of a Senior Officer so certifying to the Lenders.
- (8) *Financial Statements and Compliance Certificate.* The Administrative Agent shall have received the most recent quarterly financial statements of Finning required to have been delivered pursuant to section 8.1(14)(a), together with a Compliance Certificate as at the end of such recently completed Financial Quarter confirming compliance with sections 8.1(17) and 8.3.
- (9) *Governmental Approvals.* The Administrative Agent shall have received a certificate of a Senior Officer certifying that all Governmental Approvals required in connection with the execution, delivery and performance of the Credit Facility Documents have been obtained.
- (10) *Fees.* The Agents and the Lenders shall have received payment of all reasonable fees and all reimbursable expenses then due, including without limitation those referred to in section 2.6(c).
- (11) *Ratings.* The Administrative Agent shall have received from Finning confirmation of the Ratings (including copies of the most recent credit rating report from each of the Rating Agencies).
- (12) *No Material Adverse Effect.* Nothing shall have occurred since the end of Finning's most-recently completed Financial Year which the Administrative Agent determines is reasonably likely to have or to have had a Material Adverse Effect.
- (13) *Opinions.* The Administrative Agent shall have received opinions of counsel to the respective Borrowers in all relevant jurisdictions in respect of customary corporate and foreign-law matters (including corporate existence, capacity, execution and authorization) in form and substance satisfactory to the Administrative Agent, and shall have received opinions of counsel to the Borrowers substantially in the form of Schedule 7 annexed hereto, and shall have received the favourable opinion of Lenders' Counsel in form and substance satisfactory to the Administrative Agent.

- (14) *AML Legislation.* Each Agent and Lender shall have received such documents and information as shall be required in order to comply with applicable AML Legislation.
- (15) *Corporate Matters.* The Administrative Agent shall have received the chart referred to in section 7.7.
- (16) *Other.* The Administrative Agent shall have received such supporting and other certificates and documentation as the Lenders may reasonably request.

6.2 General Conditions for Accommodations. The Borrowers shall not be entitled to any Accommodations (other than by Conversion or Rollover) after the Amendment and Restatement Closing Date unless and until the conditions precedent set forth in this section 6.2 have been satisfied, fulfilled or otherwise met to the satisfaction of the Lenders.

- (1) *Documents.* The Credit Facility Documents (other than Bankers' Acceptances and Letters of Credit yet to be issued) shall have been executed and delivered to the Administrative Agent.
- (2) *Representations and Warranties.* All of the representations and warranties contained herein or in any other Credit Facility Document shall be true and correct in all material respects on and as of such date as though made on and as of such date (unless expressly stated to be made as of the Amendment and Restatement Closing Date or some other specified date).
- (3) *No Default.* No Default or Event of Default shall have occurred and be continuing and such Borrower shall so certify to the Lenders in the applicable Accommodation Request.
- (4) *Fees.* The Agents and the Lenders shall have received payment of all fees and all reimbursable expenses then due.
- (5) *Other.* The Applicable Agent shall have received such supporting and other certificates and documentation as the Lenders may reasonably request.

6.3 Conversions and Rollovers. The obligation of the Lenders to make any Accommodation by Conversion or Rollover under the Credit Facility shall be subject to the condition precedent that, in the event that a Default or an Event of Default shall have occurred and be continuing, the selection of (as the case may be) any Interest Period, term of a Bankers' Acceptance or currency shall be subject to the prior approval of the Applicable Agent.

6.4 Deemed Representation. Each of the giving of any Accommodation Request and the acceptance or use by a Borrower of the proceeds of any Accommodation shall be deemed to constitute a representation and warranty by such Borrower that, on the date of such Accommodation Request and on the date of any Accommodation being provided and after giving effect thereto, the applicable conditions precedent set forth in this Article 6 shall have been satisfied, fulfilled or otherwise met.

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

6.6 No Waiver. The making of any Accommodations without one or more of the conditions precedent set forth in this Article 6 having been satisfied, fulfilled or otherwise met shall not constitute a waiver by the Lenders of any such condition, and the Lenders reserve the right to require that each such condition be satisfied, fulfilled or otherwise met prior to the making of any subsequent Accommodations.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

Each Borrower (i) represents and warrants to the Lenders as set forth in this Article 7, (ii) acknowledges that the Lenders are relying thereon in entering into this Amendment and Restatement and providing Accommodations from time to time, (iii) agrees that no investigation at any time made by or on behalf of the Lenders shall diminish in any respect whatsoever their right to rely thereon, and (iv) agrees that all representations and warranties shall be valid and effective as of the date when given or deemed to have been given (including, without limitation, as of the date of this Amendment and Restatement) and to such extent shall survive the execution and delivery of this Amendment and Restatement and the provision of Accommodations from time to time.

7.1 Existence. Such Borrower and each of its Restricted Subsidiaries:

- (1) has been duly incorporated and is a validly existing corporation under the laws of its jurisdiction of formation; and
- (2) is duly licensed or qualified and authorized to do business in such jurisdiction and is in good standing with respect to all corporate and similar filings required under Applicable Law except where failure to be so licensed, qualified or authorized, or failure to make such filings, does not have and would not reasonably be expected to have a Material Adverse Effect.

7.2 Capacity. Such Borrower and each of its Restricted Subsidiaries has full corporate right, power and authority to enter into, and perform its obligations under, each Credit Facility Document to which it is or will be a party, and has full corporate power and authority to own and operate its Properties and to carry on its business as now conducted.

7.3 Authority. The execution and delivery by such Borrower and each of its Restricted Subsidiaries of the Credit Facility Documents to which it is or will be a party and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by its directors.

7.4 Authorization. Governmental Approvals, etc. All Governmental Approval required to be obtained on the part of such Borrower and each of its Restricted Subsidiaries in connection with the execution, delivery and performance of the Credit Facility Documents to which it is a party have been obtained.

7.5 Enforceability. This agreement has been duly executed and delivered by such Borrower and each of its Restricted Subsidiaries and constitutes, and each other Credit Facility Document to which it is or will be a party and each other document hereby or thereby contemplated when executed by it will constitute, valid and binding obligations of it enforceable against it in accordance with their respective terms, subject to such customary qualifications as shall be set forth in the opinion of Borrowers' Counsel delivered pursuant to section 6.1(13).

7.6 No Breach. The entering into and compliance by such Borrower and each of its Restricted Subsidiaries with all of the provisions of the Credit Facility Documents to which it is or will be a party are legal, do not violate any provisions of any Applicable Law applicable to it and do not result in any breach of any of the provisions of, or constitute a default under, or result in the creation of any Lien on any of its property under the provisions of, any of its Charter Documents or any material loan, credit, note, guarantee or other material agreement or instrument to which it is a party or by which it or its respective property may be bound.

7.7 Subsidiaries. Finning has delivered to the Lenders a chart, certified by a Senior Officer, setting forth as at the Amendment and Restatement Closing Date the corporate structure and jurisdiction of formation of each of the Restricted Subsidiaries and, except for Finning, the ownership of their share capital.

7.8 Immunity, etc. Such Borrower and each of its Restricted Subsidiaries is subject to the relevant commercial law of its jurisdiction of formation and is generally subject to suit and it is not immune nor does any of its property or revenues enjoy any right of immunity from any judicial proceedings, including attachment prior to judgment, attachment in aid of execution, execution of judgment or otherwise.

7.9 Litigation. At the Amendment and Restatement Closing Date, there are no actions, suits, claims or proceedings pending or (to its knowledge) threatened against such Borrower or any of its Restricted Subsidiaries at law or in equity or before or by any Governmental Authority which have a reasonable likelihood of being determined adversely and which, individually or in the aggregate, if adversely determined have or would reasonably be expected to have a Material Adverse Effect.

7.10 Books and Records. Such Borrower and each of its Restricted Subsidiaries maintains books, records and accounts in reasonable detail which accurately and fairly reflect its respective transactions and business affairs and permit preparation of financial statements in accordance with GAAP.

7.11 Compliance. Except as otherwise disclosed in writing to the Lenders prior to the Amendment and Restatement Closing Date, as at the Amendment and Restatement Closing Date:

- (a) no Default or Event of Default has occurred and is continuing; and
- (b) neither such Borrower nor any of its Restricted Subsidiaries is in default with respect to any Applicable Law to the extent that the sanctions, consequences and penalties resulting from such defaults, if applied individually or in the aggregate, have or would reasonably be expected to have a Material Adverse Effect;
- (c) neither such Borrower nor any of its Restricted Subsidiaries:
 - (i) is in violation of, or has any liability under, any Environmental Law applicable to such Borrower or Restricted Subsidiary;
 - (ii) is aware of the presence, Release or disposal of any Hazardous Materials at any of its respective prior or currently owned, leased or operated property;
 - (iii) is subject to any litigation, investigation, order or proceeding in connection with Hazardous Materials or Environmental Laws; and
 - (iv) is subject to any environmental, health or safety condition;which, for any of the foregoing, individually or in the aggregate, has or would reasonably be expected to have a Material Adverse Effect;
- (d) such Borrower and each of its Restricted Subsidiaries has obtained all Governmental Approvals which are necessary to carry on its business as now being conducted and each such Governmental Approval is in full force and effect, has not been surrendered, forfeited or become void or voidable, and there are no defaults under any Governmental Approval of such Borrower or any of its Restricted Subsidiaries to the extent that failure to obtain such Governmental Approval or the sanctions, consequences and penalties resulting from such defaults, if applied individually or in the aggregate, have or would reasonably be expected to have a Material Adverse Effect; and
- (e) neither such Borrower nor any of its Restricted Subsidiaries is in default, nor is there in existence an event or condition which, with the giving of notice, the passage of time, the making of any determination or any combination of the foregoing would be a default, under:
 - (i) any Indebtedness; or
 - (ii) any agreement or instrument to which such Borrower or Restricted Subsidiary is a party or by which such Borrower or Restricted Subsidiary or its respective property may be bound;

which defaults, if applied individually or in the aggregate, have or would reasonably be expected to have a Material Adverse Effect.

7.12 Latest Annual Financial Statements. As a representation to be made by Finning only, the audited consolidated financial statements of Finning as of and for the year ended December 31, 2016, copies of which have been delivered to the Administrative Agent, were prepared in accordance with accounting principles generally accepted in Canada as at the date of such financial statements (applied on a basis consistent with the most recent audited financial statements of Finning and its consolidated subsidiaries), except for changes approved by the auditors of Finning, and present fairly, as at the date of such financial statements, the consolidated financial position of Finning.

7.13 Indebtedness. Neither such Borrower nor any of its Restricted Subsidiaries has any Indebtedness outstanding at the Amendment and Restatement Closing Date except for Permitted Indebtedness.

7.14 Franchises, etc. Such Borrower and each of its Restricted Subsidiaries has all franchises, permits, approvals, validations, licences and other like interests, rights and authorities necessary to carry on its respective business as now being conducted and as proposed to be conducted, and there are no defaults under any of such franchises, permits, approvals, validations, licenses or other interests, rights or authorities to the extent that the failure to have or obtain any such franchise, permit, approval, validation, license or other authority or the sanctions, consequences and penalties from such defaults, if applied individually or in the aggregate, have or would reasonably be expected to have a Material Adverse Effect.

7.15 Ownership of Property. Such Borrower and each of its Restricted Subsidiaries:

- (1) owns or has rights to use all property necessary to carry on its respective business in all material respects as now being conducted; and
- (2) has good title to all real property which such Borrower or Restricted Subsidiary purports to own in fee simple and to all personal property which such Borrower or Restricted Subsidiary purports to own in like manner, except where the failure to have such good title, if applied individually or in the aggregate, does not have and would not reasonably be expected to have a Material Adverse Effect; and
- (3) holds its respective property free from all Liens except for Permitted Liens.

7.16 Intellectual Property. Such Borrower and each of its Restricted Subsidiaries owns or possesses all patents, trademarks, service marks, trade names, copyrights, licenses and rights with respect to the foregoing necessary for the conduct of its respective business, without any known conflict with the rights of others which, if determined against such Borrower or Restricted Subsidiary, if applied individually or in the aggregate, have or would reasonably be expected to have a Material Adverse Effect.

7.17 Leases. Such Borrower and each of its Restricted Subsidiaries enjoys peaceful and undisturbed possession under all material leasehold and similar interests under which such Borrower or Restricted Subsidiary is a lessee or is operating, and all of such leases are valid and subsisting and neither such Borrower nor any Restricted Subsidiary is in default with respect to any leases save for defaults which, if applied individually or in the aggregate, do not have and would not reasonably be expected to have a Material Adverse Effect.

7.18 Margin Stock. Neither such Borrower nor any of its Restricted Subsidiaries is engaged in the business of extending or arranging for the extension of credit for the purpose of carrying margin stock as defined in Regulation U of the Board Governors of the Federal Reserve System as in effect from time to time. No part of the proceeds of any Loan or any Letter of Credit will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of, or that is inconsistent with, the provisions of the regulations of the Board of Governors of the Federal Reserve System, including Regulation T, U or X.

7.19 Pension and Benefit Plans.

(1) With respect to any Canadian Benefit Plans to which such Borrower or any of its Restricted Subsidiaries is a party:

- (a) there have been no improper withdrawals or applications of the assets of any such Canadian Benefit Plans;
- (b) all contributions or premiums required to be made or paid by such Borrower or any of its Restricted Subsidiaries to such Canadian Benefit Plans have been made or paid in a timely fashion in accordance with the terms of such plans and all Requirements of Law;
- (c) all required employee contributions to such Canadian Benefit Plans by way of authorized payroll deduction or otherwise have been properly withheld or collected by such Borrower or Restricted Subsidiary, and have been fully paid into those plans in a timely manner;

except where such non-compliance has not had and would not reasonably be expected to have a Material Adverse Effect.

(2) Such Borrower and each of its Restricted Subsidiaries is in compliance with all Applicable Laws pertaining to pension plans (other than Canadian Pension Plans which are covered separately herein) except where such non-compliance has not had and would not reasonably be expected to have a Material Adverse Effect.

(3) None of the Borrowers has any material operations or employees in the United States.

7.20 Taxes. Except for circumstances which, individually or in the aggregate, do not have and would not reasonably be expected to have a Material Adverse Effect:

- (a) all tax returns required to be filed by such Borrower and each of its Restricted Subsidiaries in any jurisdiction have been filed;
- (b) all taxes, assessments, fees and other governmental charges upon such Borrower or Restricted Subsidiary or upon any of its respective property, which are due and payable, have been paid on a timely basis or within appropriate extension periods or are being contested in good faith by appropriate proceedings (and in respect of which adequate provision has been made on its respective books);
- (c) such Borrower or Restricted Subsidiary has collected, deducted, withheld and remitted to the proper taxing authorities when due all taxes, workers compensation assessments, employment insurance assessments, fees and other similar amounts required to be collected, deducted, withheld and remitted; and
- (d) neither such Borrower nor any Restricted Subsidiary knows of any proposed additional tax assessments against such Borrower or Restricted Subsidiary for which adequate provision has not been made on its respective books which have a reasonable likelihood of being adversely determined.

7.21 Material Adverse Effect. Since December 31, 2014 and up to the Amendment and Restatement Closing Date, there has been no event or condition that constitutes or would reasonably be expected to constitute a Material Adverse Effect.

7.22 *Pari Passu.* The payment Obligations of such Borrower under this agreement and each other Credit Facility Document to which it is a party rank at least *pari passu* in right of payment with all of its other unsecured and unsubordinated indebtedness of such Borrower, other than any such indebtedness which is preferred by mandatory provisions of Applicable Law.

7.23 Information. All information supplied to the Lenders by or on behalf of such Borrower on or before the Amendment and Restatement Closing Date is, with respect to factual matters, true and correct in all material respects and all projections, forecasts and other matters being the subject of opinion have been prepared on the basis of assumptions believed to be reasonable in the circumstances.

ARTICLE 8 COVENANTS

8.1 Affirmative Covenants. Until the Obligations are paid and satisfied in full and this agreement has been terminated, and in addition to any other covenants herein set forth, each Borrower covenants as set forth in this section 8.1.

- (1) *Maintain Existence.* Such Borrower and each of its Restricted Subsidiaries shall:
 - (a) maintain and preserve its respective corporate existence and right to carry on business; and
 - (b) use reasonable commercial efforts to maintain, preserve, renew and extend all rights, powers, privileges and franchises necessary to the proper conduct of its respective business as now being conducted except where failure to do so does not have and would not reasonably be expected to have a Material Adverse Effect.
- (2) *Compliance with Laws, etc.* Such Borrower and each of its Restricted Subsidiaries shall comply with all Applicable Laws (including for greater certainty all Environmental Laws) relating to its respective business where failure to comply, individually or in the aggregate, has or would reasonably be expected to have a Material Adverse Effect.
- (3) *Payment of Taxes and Claims.* Such Borrower and each of its Restricted Subsidiaries shall pay and discharge when due:
 - (a) all taxes, assessments and governmental charges or levies imposed upon it, its respective income or property ; and
 - (b) all lawful claims which, if unpaid, might become a Lien upon its respective property;

except where failure to do so does not have and would not reasonably be expected to have a Material Adverse Effect; provided that such Borrower or Restricted Subsidiary shall not be required to pay any such tax, assessment, charge, levy or claim, the payment of which is being contested in good faith and by proper proceedings that will stay the forfeiture or sale of any property and with respect to which adequate reserves are maintained.
- (4) *Governmental Approvals.* Such Borrower and each of its Restricted Subsidiaries shall obtain (to the extent not in existence on the date hereof) all Governmental Approvals necessary for the operation of its respective business as presently conducted and comply in all material respects with the covenants, terms and conditions set out in such Governmental Approvals, unless failure to so obtain or non-compliance, individually or in the aggregate, does not have and would not reasonably be expected to have a Material Adverse Effect.
- (5) *Material Agreements.* Such Borrower and each of its Restricted Subsidiaries will comply in all material respects with the covenants, terms and conditions set out in each material agreement or instrument to which such Borrower or Restricted Subsidiary is a party or by which such Borrower or Restricted Subsidiary or its respective property is bound, save where such failure to

comply, individually or in the aggregate when considered with all other such failures, does not have and would not reasonably be expected to have a Material Adverse Effect.

- (6) *Insurance.* Such Borrower and each of its Restricted Subsidiaries shall maintain with reputable insurers insurance in amounts, on terms and with such coverage as is in accordance with prudent industry practice and, at the written request of the Administrative Agent, will provide to the Administrative Agent evidence of such insurance and of the payment of the applicable premiums.
- (7) *Keeping of Books.* Such Borrower and each of its Restricted Subsidiaries shall keep at all times proper books of record and account in which full, true and correct entries shall be made of all dealings or transactions of or in relation to the business and affairs of such Borrower or Restricted Subsidiary in accordance with GAAP.
- (8) *Rights of Inspection.* At any time and from time to time upon reasonable notice by either Agent, such Borrower will permit (or cause any of its Restricted Subsidiaries to permit) any officer, agent or other representative of the Lenders, when accompanied by a representative of an Agent, at the expense of such Borrower or Restricted Subsidiary, to examine and make copies of any abstracts from its respective records and books of account and to enter into and inspect its respective premises and, subject to Applicable Laws, to discuss any of its business affairs with any of its senior officers.
- (9) *Conduct of Business.* Such Borrower and each of its Restricted Subsidiaries shall:
 - (a) carry on and conduct its respective business in accordance with sound business practices;
 - (b) shall maintain its respective material assets in reasonable repair and working order (excluding normal wear and tear); and
 - (c) use commercially reasonable efforts to preserve and protect all patents, trademarks, service marks, trade names, copyrights, licenses and rights with respect to the foregoing necessary for the conduct of its respective business.
- (10) *Pay Obligations to Lenders.* Such Borrower shall duly and punctually pay or cause to be paid to the Applicable Agent for the account of each Lender all principal, interest, stamping fees for Bankers' Acceptances, standby fees and other fees and amounts payable by it hereunder on the dates, at the places and in the moneys and manner set forth herein.
- (11) *Use of Proceeds.* Such Borrower will use the proceeds of all Accommodations made available to it only for the purposes set forth in section 2.1(2).

- (12) *Ownership of Borrowers.* Each Borrower other than Finning will remain a wholly-owned subsidiary of Finning.
- (13) *Ownership of Certain Assets.* Finning (or a Restricted Subsidiary which has provided a guarantee of the Obligations of all Borrowers in a form that is the same in all material respects as the Finning Guarantee) will remain the direct owner of Finning (Canada) and its Caterpillar dealership agreements; for this purpose, "Finning (Canada)" means the operating division of Finning that holds the Caterpillar dealership agreements for British Columbia, Alberta, the Yukon Territory, the Northwest Territories and a portion of Nunavut and which sells and rents Caterpillar and complementary equipment and provides customer support services throughout these licensed areas.
- (14) *Financial and Other Reporting.* Such Borrower will deliver to the Administrative Agent the following:
- (a) (in the case of Finning only) no later than 60 days after the end of each of the first three Financial Quarters, consolidated financial statements for that Financial Quarter on an unaudited basis;
 - (b) (in the case of Finning only) no later than 120 days after the end of each Financial Year, consolidated financial statements for that Financial Year on an audited basis;
 - (c) [intentionally deleted];
 - (d) with each of the financial statements in (a) and (b) above, a Compliance Certificate signed by a Senior Financial Officer;
 - (e) [intentionally deleted]; and
 - (f) such other information as either Agent shall from time to time reasonably request.
- (15) *Notice of Certain Events.* Such Borrower will notify the Administrative Agent in writing of the following:
- (a) as soon as practicable upon the occurrence thereof, any of the following:
 - (i) a Default;
 - (ii) an Event of Default;
 - (iii) an event or circumstances which has, or would reasonably be expected to have, a Material Adverse Effect;

- (b) (in the case of Finning only) promptly, any decision (for whatever reason) by a Rating Agency to cease providing a Rating, any change in a Rating by either Rating Agency, or any new such Rating;
 - (c) as soon as practicable after such Borrower obtains knowledge thereof, notice of any action, suit, claim or proceeding pending or (to its knowledge) threatened against such Borrower or any of its Restricted Subsidiaries at law or in equity or before or by any Governmental Authority which has a reasonable likelihood of being determined adversely and which, if adversely determined, would reasonably be expected to have a Material Adverse Effect;
 - (d) from time to time the names of those officers of such Borrower who have been duly authorized to sign Bankers' Acceptances (in the case of Canadian Borrowers only), notes, instruments, agreements and certificates hereunder; and
 - (e) (in the case of Finning only) within 60 days following any change in the information required to be set forth therein, an update to the most recent chart setting forth the corporate structure and jurisdiction of formation of each of the Restricted Subsidiaries and, except for Finning, the ownership of their share capital.
- (16) *Environmental Compliance Orders.* Upon receipt, such Borrower will notify the Administrative Agent and make available for inspection and review on a confidential basis by representatives of the Lenders, copies of all written orders, directions, claims or complaints by a Governmental Authority:
- (a) relating to the environmental condition of such Borrower's or any of its Restricted Subsidiaries' respective assets, or
 - (b) relating to non-compliance with any Environmental Law;
- where failure to comply with or resolve such orders, claims or complaints has or would be reasonably expected to have a Material Adverse Effect.
- (17) *Share of Revenues and Assets, etc.* Concurrently with or prior to the delivery of any Compliance Certificate under section 6.1(8) or 8.1(14)(d), where either:
- (a) the total revenues of Finning and the Restricted Subsidiaries on an unconsolidated basis, calculated as at the end of the Financial Quarter covered by such Compliance Certificate on the basis of the four Financial Quarters then ended, comprise less than []¹⁰% of the total consolidated revenues of Finning; or

¹⁰ Percentage redacted

- (b) the total assets of Finning and the Restricted Subsidiaries on an unconsolidated basis, calculated as at the end of such Financial Quarter, comprise less than []¹¹% of Consolidated Total Assets;

Finning shall designate as Restricted Subsidiaries in accordance with section 1.4 such one or more additional Subsidiaries as would have been sufficient to achieve compliance with the foregoing []¹²% thresholds had such Subsidiaries been Restricted Subsidiaries throughout the relevant period(s).

- (18) *Further Assurances.* Such Borrower will at its cost and expense, upon request of either Agent, duly execute and deliver, or cause to be duly executed and delivered, to such Agent such further instruments and do and cause to be done such further acts as may be necessary or proper in the reasonable opinion of such Agent to carry out more effectually the provisions and purposes of this agreement and the other Credit Facility Documents.

8.2 Negative Covenants. Until the Obligations are paid and satisfied in full and this agreement has been terminated, and in addition to any other covenants herein set forth, each Borrower covenants and agrees that it will not take any of the actions set forth in this section 8.2 or permit or suffer same to occur without the prior written consent of the Majority Lenders pursuant to section 12.2.

- (1) *Liens.* Neither such Borrower nor any of its Restricted Subsidiaries will grant, create, assume or suffer to exist any Lien on any of its property other than Permitted Liens.
- (2) *Indebtedness.* Neither such Borrower nor any of its Restricted Subsidiaries will incur, assume, create or become in any way liable for any Indebtedness other than Permitted Indebtedness.
- (3) *Certain Indebtedness.* Finning will not permit any of the Finning Barbados Entities to incur any Indebtedness for borrowed money or to carry on any business or activity other than:
 - (a) investing its funds in term deposits, certificates of deposit or similar instruments issued by financial institutions; and
 - (b) providing financial assistance to Finning or any of its subsidiaries.
- (4) *Merger, etc.* Neither such Borrower nor any of its Restricted Subsidiaries will merge, amalgamate, consolidate or otherwise enter into any other form of business combination with any other person, except for Permitted Mergers.

¹¹ Percentage redacted.

¹² Percentage redacted.

- (5) *Business.* Neither such Borrower nor any of its Restricted Subsidiaries will make any change whereby the nature of the business carried on by the Borrowers (taken on a consolidated basis) would be materially altered.
- (6) *Dispositions.* Neither such Borrower nor any of its Restricted Subsidiaries will sell, transfer, convey, lease or otherwise dispose of (other than by way of Permitted Liens) all or any material part of its properties or assets (other than to a Borrower or a Restricted Subsidiary); provided that such Borrower or Restricted Subsidiary may:
 - (a) sell, assign or transfer assets pursuant to Permitted Receivables Securitizations; and
 - (b) sell, transfer, convey, lease or otherwise dispose of assets (including by the sale of all or part of the assets or shares of a Restricted Subsidiary) so long as the result does not have and would not reasonably be expected to have a Material Adverse Effect.
- (7) *Sanctioned Persons.* Neither such Borrower nor any of its Restricted Subsidiaries appears on the list of Specially Designated Nationals and Blocked Persons published by the Office of Foreign Assets Control ("OFAC") of the U.S. Treasury Department or the U.S. Department of State; and such Borrower will not use the proceeds of the Accommodations in any manner that will result in a violation by any Lender of any United States sanctions administered by OFAC or the U.S. Department of State.

8.3 Financial Covenant. As at each Calculation Date, the Total Debt to Total Capitalization Ratio shall not exceed 0.625 to 1.

8.4 Agents May Perform Covenants. If a Borrower shall fail to perform or observe any covenant on its part contained herein or in any other Credit Facility Document, either Agent may, in its sole discretion acting reasonably, and shall upon the instructions of the Majority Lenders, in either case subject to it having been indemnified to its satisfaction, perform (or cause to be performed), any of the said covenants capable of being performed by such Agent and, if any such covenant requires the payment or expenditure of money, such Agent may make such payment or expenditures with its own funds or with money borrowed for that purpose (but neither Agent shall be under any obligation to do so); provided that such Agent shall first have provided written notice of its intention to Finning and a reasonable opportunity (not to exceed 20 days, or such longer period as the Lenders shall approve) to cure the failure. All amounts paid by an Agent pursuant to this section 8.4 shall be repaid by the relevant Borrower to such Agent on demand therefor, and shall form part of the Obligations. No payment or performance under this section 8.4 shall relieve any Borrower from any Event of Default.

ARTICLE 9 CHANGES IN CIRCUMSTANCES

9.1 Increased Costs.

- (1) *Increased Costs Generally.* If any Change in Law shall:
 - (a) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;
 - (b) subject any Lender to any Tax of any kind whatsoever with respect to this agreement or any Accommodation made by it, or change the basis of taxation of payments to such Lender in respect thereof, except for Indemnified Taxes or Other Taxes covered by section 9.2 and the imposition, or any change in the rate, of any Excluded Tax payable by such Lender; or
 - (c) impose on any Lender or any applicable interbank market any other condition, cost or expense affecting this agreement or Accommodations made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Accommodation (or of maintaining its obligation to make any such Accommodation), or to reduce the amount of any sum received or receivable by such Lender or the Issuing Bank hereunder (whether of principal, interest or any other amount), then upon request of such Lender each relevant Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

- (2) *Capital Requirements.* If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital as a consequence of this agreement, the Commitments of such Lender or the Accommodations made by, or the Letters of Credit issued or participated in by such Lender, to a level below that which such Lender could have achieved but for such Change in Law (taking into consideration such Lender's policies with respect to capital adequacy), then from time to time each relevant Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for any such reduction suffered.
- (3) *Certificates for Reimbursement.* A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in section 9.1(1) or 9.1(2), including reasonable detail of the basis of calculation of the amount or amounts, and delivered to each relevant Borrower shall be conclusive absent manifest error. Each relevant Borrower shall pay such Lender the amount shown as due by such Borrower on any such certificate within ten days after receipt thereof. Notwithstanding the provisions of sections 9.1(1) and 9.1(2), a Lender shall be entitled to require payment of amounts from a Borrower to compensate for

costs incurred or reductions suffered thereunder only to the extent that such Lender is passing on such costs or reductions to its borrowers generally under loan agreements that permit such costs or reductions to be passed on.

- (4) *Delay in Requests.* Failure or delay on the part of any Lender to demand compensation pursuant to this section shall not constitute a waiver of such Lender's right to demand such compensation, except that a relevant Borrower shall not be required to compensate a Lender pursuant to this section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies such Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefore, unless the Change in Law giving rise to such increased costs or reductions is retroactive, in which case the nine-month period referred to above shall be extended to include the period of retroactive effect thereof.

9.2 Taxes.

- (1) *Payments Subject to Taxes.* If any Obligor, Agent or Lender is required by Applicable Law to deduct or pay any Indemnified Taxes (including any Other Taxes) in respect of any payment by or on account of any obligation of an Obligor hereunder or under any other Credit Facility Document, then:
 - (a) the sum payable shall be increased by such Obligor when payable as necessary so that after making or allowing for all required deductions and payments (including deductions and payments applicable to additional sums payable under this section) such Agent or Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions or payments been required;
 - (b) such Obligor shall make any such deductions required to be made by it under Applicable Law; and
 - (c) such Obligor shall timely pay the full amount required to be deducted to the relevant Governmental Authority in accordance with Applicable Law.
- (2) *Payment of Other Taxes by the Borrowers.* Without limiting the provisions of section 9.2(1) above, each relevant Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.
- (3) *Indemnification by the Borrowers.* Each relevant Borrower shall indemnify each Agent and Lender, within ten days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this section) paid by such Agent or Lender and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or

legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to such Borrower by a Lender (with a copy to the Administrative Agent), or by an Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

- (4) *Evidence of Payments.* As soon as practicable after any payment of Indemnified Taxes or Other Taxes by an Obligor to a Governmental Authority, each relevant Obligor shall deliver to the Applicable Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Applicable Agent. It is acknowledged that confirmation of the payment of relevant Indemnified Taxes or Other Taxes shall be set forth in Compliance Certificates, with such further and additional evidence as the Applicable Agent may from time to time reasonably request.
- (5) *Status of Lenders.* Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which a relevant Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Credit Facility Document shall, at the request of such Borrower, deliver to such Borrower (with a copy to the Applicable Agent), at the time or times prescribed by Applicable Law or reasonably requested by such Borrower or the Applicable Agent, such properly completed and executed documentation prescribed by Applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition:
 - (a) any Lender, if requested by a relevant Borrower or the Applicable Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by such Borrower or Agent as will enable such Borrower or Agent to determine whether or not such Lender is subject to withholding or information reporting requirements; and
 - (b) any Lender that ceases to be, or to be deemed to be, resident in Canada for purposes of Part XIII of the *Income Tax Act* (Canada) or any successor provision thereto shall within five days thereof notify each relevant Borrower and the Applicable Agent in writing.
- (6) *Treatment of Certain Refunds and Tax Reductions.* If an Agent or Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by a Borrower or with respect to which an Obligor has paid additional amounts pursuant to this section or that, because of the payment of such Taxes or Other Taxes, it has benefited from a reduction in Excluded Taxes otherwise payable by it, it shall pay to such Borrower or Obligor, as applicable, an amount equal to such refund or reduction (but only to the extent of indemnity payments made, or

additional amounts paid, by such Borrower or Obligor under this section with respect to the Taxes or Other Taxes giving rise to such refund or reduction), net of all out-of-pocket expenses of such Agent or Lender, as the case may be, and without interest (other than any net after-Tax interest paid by the relevant Governmental Authority with respect to such refund). Such Borrower or Obligor as applicable, upon the request of such or Lender, agrees to repay the amount paid over to such Borrower or Obligor (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to such Agent or Lender if such Agent or Lender is required to repay such refund or reduction to such Governmental Authority. This paragraph shall not be construed to require any Agent or Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to a Borrower or any other person, to arrange its affairs in any particular manner or to claim any available refund or reduction.

9.3 Mitigation Obligations; Replacement of Lenders.

- (1) *Designation of a Different Lending Office.* If any Lender requests compensation under section 9.1, or requires a Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to section 9.2, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Accommodations hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to section 9.1 or 9.2, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Each relevant Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.
- (2) *Replacement of Lenders.* If any Lender requests compensation under section 9.1, if a Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to section 9.2, if any Lender's obligations are suspended pursuant to section 9.4 or if any Lender defaults in its obligation to fund Accommodations hereunder, then Finning may, at its sole expense and effort, upon ten days' notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, section 12.8), all of its interests, rights and obligations under this agreement and the related Credit Facility Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

- (a) Finning pays to the Administrative Agent the assignment fee specified in section 12.8(2)(f);
- (b) the assigning Lender receives payment of an amount equal to the outstanding principal of its Accommodations, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Credit Facility Documents (including any breakage costs and amounts required to be paid under this agreement as a result of prepayment to a Lender) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or such Borrower (in the case of all other amounts);
- (c) in the case of any such assignment resulting from a claim for compensation under section 9.1 or payments required to be made pursuant to section 9.2, such assignment will result in a reduction in such compensation or payments thereafter; and
- (d) such assignment does not conflict with Applicable Law.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling Finning to require such assignment and delegation cease to apply.

9.4 Illegality. If any Lender determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make or maintain any Accommodation (or to maintain its obligation to make any Accommodation), or to determine or charge interest rates based upon any particular rate, then, on notice thereof by such Lender to each relevant Borrower through the Applicable Agent, any obligation of such Lender with respect to the activity that is unlawful shall be suspended until such Lender notifies such Agent and Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, such Borrower shall, upon demand from such Lender (with a copy to the Applicable Agent), prepay or, if conversion would avoid the activity that is unlawful, convert any Accommodations, or take any necessary steps with respect to any Letter of Credit in order to avoid the activity that is unlawful. Upon any such prepayment or conversion, such Borrower shall also pay accrued interest on the amount so prepaid or converted. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

9.5 Inability to Determine Rates Etc. If the Majority Lenders determine that for any reason a market for Bankers' Acceptances does not exist at any time or the Lenders cannot for other reasons, after reasonable efforts, readily sell Bankers' Acceptances or perform their other obligations under this agreement with respect to Bankers' Acceptances, the Administrative Agent will promptly so notify the relevant Borrowers and each Lender. Thereafter, such Borrowers' right to request the acceptance of Bankers' Acceptances shall be and remain suspended until the Majority Lenders determine and the Administrative Agent

notifies such Borrowers and each Lender that the condition causing such determination no longer exists. If the Majority Lenders determine that for any reason adequate and reasonable means do not exist for determining the CDOR Rate or LIBOR (as applicable) for any requested Interest Period with respect to a proposed CDOR Rate Advance or LIBOR Advance (as applicable), or that the CDOR Rate or LIBOR (as applicable) for any requested Interest Period with respect to a proposed CDOR Rate Advance or LIBOR Advance (as applicable) does not adequately and fairly reflect the cost to such Lenders of funding such CDOR Rate Advance or LIBOR Advance (as applicable), the Administrative Agent will promptly so notify the relevant Borrowers and each Lender. Thereafter, the obligation of the Lenders to make or maintain CDOR Rate Advances or LIBOR Advances (as applicable) shall be suspended until the Administrative Agent (upon the instruction of the Majority Lenders) revokes such notice. Upon receipt of such notice, a Borrower may revoke any pending request for a Borrowing, Conversion or Rollover of CDOR Rate Advances or LIBOR Advances (as applicable) or, failing that, will be deemed to have converted such request into a request for a Borrowing of (as the case may be) Prime Rate Advances, Base Rate Advances or US Prime Rate Advances in the amount specified therein (or, as applicable, the appropriate Equivalent Amount in Canadian Dollars or US Dollars of a LIBOR Advance denominated in Euros or Sterling). During the 30 days following the giving of a notice by the Administrative Agent under this section 9.5, the Administrative Agent and Finning will negotiate in good faith in order to arrive at a mutually acceptable substitute basis for calculating the interest payable on each relevant CDOR Rate Advance or LIBOR Advance (as applicable). If a substitute basis is agreed within that period then it shall apply in accordance with its terms (and may be retrospective to the beginning of the relevant Interest Period). Unless and until a substitute basis is agreed under as aforesaid, the interest payable on each relevant CDOR Rate Advance or LIBOR Advance (as applicable) to a Lender will be the rate certified by such Lender to be its cost of funds (from such sources as it may reasonably select) plus the relevant Applicable Margin. The Administrative Agent will not agree a substitute basis hereunder without first obtaining the approval of all of the Lenders.

9.6 Indemnification re Matching Funds. Each relevant Borrower shall promptly pay to each Lender any amounts required to compensate such Lender for any breakage or similar cost, loss, cost of redeploying funds or other cost or expense suffered or incurred by such Lender as a result of:

- (a) any payment being made by such Borrower in respect of a CDOR Rate Advance, a LIBOR Advance or a Bankers' Acceptance (due to acceleration hereunder or a mandatory repayment or prepayment of principal or for any other reason) on a day other than the last day of an Interest Period or the maturity date applicable thereto; provided that, where the event giving rise to such payment is a mandatory repayment or prepayment, such Borrower may at its option instead pay such amount to the Administrative Agent, and shall be held by the Administrative Agent (pending the expiry of subsisting Interest Periods or the maturity of Bankers' Acceptances, as the case may be) in a trust account and invested in Cash Equivalents as directed by the Administrative Agent and applied against the obligations of such

Borrower in respect of such CDOR Rate Advances, LIBOR Advances or Bankers' Acceptances as they come due;

- (b) such Borrower's failure to give Notice in the manner and at the times required hereunder; or
- (c) the failure of such Borrower to fulfil or honour, before the date specified for any Accommodation, the applicable conditions set forth in Article 6 or to accept an Accommodation after delivery of an Accommodation Request in the manner and at the time specified in such Accommodation Request.

A certificate of such Lender submitted to such Borrower (with a copy to the Applicable Agent) as to the amount necessary to so compensate such Lender shall be conclusive evidence, absent demonstrated error, of the amount due from such Borrower to such Lender.

9.7 FATCA.

- (1) Each Lender shall, at such times as are reasonably requested by Finning or the Administrative Agent, provide Finning and the Administrative Agent with any properly completed and executed documentation prescribed by Law, or reasonably requested by Finning or the Administrative Agent, certifying as to any entitlement of such Lender to an exemption from, or reduction in, any withholding Tax with respect to any payments to be made to such Lender under the Credit Facility Documents (including any documentation necessary to establish an exemption from, or reduction of, any Taxes that may be imposed under FATCA). Each such Lender shall, whenever a lapse in time or change in circumstances renders such documentation expired, obsolete or inaccurate in any respect, deliver promptly to Finning and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the applicable withholding agent) or promptly notify Finning and the Administrative Agent of its inability to do so. In addition, any Lender, if reasonably requested by Finning or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by Finning or the Administrative Agent as will enable Finning or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in subsection (2) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

- (2) If a payment made to a Lender under any Credit Facility Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to Finning and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Finning or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by Finning or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this subsection (2), "FATCA" shall include any amendments made to FATCA after the date of this Amendment and Restatement.

ARTICLE 10 EVENTS OF DEFAULT

10.1 Events of Default. Each of the events set forth in this section 10.1 shall constitute an "Event of Default".

- (1) *Payment.* A Borrower shall fail:
 - (a) to pay the principal amount of any Advance or BA Equivalent Advance when the same becomes due and payable;
 - (b) to reimburse any Lender in respect of any Bankers' Acceptance or Letter of Credit, or pay the Face Amount thereof, when required hereunder; or
 - (c) to pay any interest or fees hereunder when the same becomes due and payable;

and, in the case of (a) or (b), such failure shall remain unremedied for a period of one Business Day after notice from either Agent to Finning or, in the case of (c), such failure shall remain unremedied for a period of five days after notice from either Agent to Finning.

- (2) *Representations and Warranties Incorrect.* Any of the representations or warranties made or deemed to have been made by a Borrower in any Credit Facility Document shall prove to be or have been incorrect in any material respect when made or deemed to have been made.
- (3) *Failure to Perform Certain Covenants.* A Borrower or Restricted Subsidiary shall fail to perform or observe any covenant contained in any Credit Facility Document on its part to be performed or observed or otherwise applicable to

it; provided that, if such failure is capable of being remedied, no Event of Default shall have occurred as a result thereof unless and until such failure shall have remained unremedied for 30 days (during which period Finning or a Borrower shall be diligently proceeding to remedy such failure) after the earlier of (i) written notice thereof given to Finning by either Agent, and (ii) such time as a senior officer of a Borrower is aware of same.

- (4) *Indebtedness.* Any of the following shall occur, namely:
- (a) any Borrower or Restricted Subsidiary shall fail to pay any Indebtedness (excluding the obligations under the Credit Facility) which is outstanding in an aggregate principal amount exceeding C\$[]¹³ (or the Equivalent Amount in any other currency) when such amount becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) beyond any applicable grace period; or
 - (b) any other event occurs or condition exists (including a failure to pay the premium or interest on such Indebtedness) and continues after the applicable grace period, if any, specified in any agreement or instrument relating to any such Indebtedness which is outstanding in an aggregate principal amount exceeding C\$[]¹⁴ (or the Equivalent Amount in any other currency) without waiver of such failure by the holder of such Indebtedness on or before the expiration of such period, as a result of which such Indebtedness is accelerated.
- (5) *Judgment.* Any judgment or order for the payment of money in excess of C\$[]¹⁵ (or the Equivalent Amount in any other currency) is rendered against any Borrower or Restricted Subsidiary and remains unsatisfied or unstayed for more than 30 days.
- (6) *Bankruptcy, etc.* Any Borrower or Restricted Subsidiary does not pay its debts generally as they become due or admits its inability to pay its debts generally as they become due or makes a general assignment for the benefit of creditors or commits any other act of bankruptcy (within the meaning of the *Bankruptcy and Insolvency Act* (Canada) or equivalent or analogous law of any foreign jurisdiction) or any proceedings are instituted by or against a Borrower or Restricted Subsidiary seeking to adjudicate it a bankrupt or declare it insolvent or seeking administration, liquidation, winding-up, reorganization, compromise, arrangement, adjustment, protection, relief or composition of it or with respect to its debts, whether by voluntary arrangement, scheme of arrangement or otherwise, under any Applicable Law relating to bankruptcy, insolvency or reorganization or relief with respect to debtors or other similar matters, or seeking the appointment of a

¹³ Amount redacted.

¹⁴ Amount redacted.

¹⁵ Amount redacted.

receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official for it or for all or any substantial part of its property, or any Borrower or Restricted Subsidiary takes corporate action to authorize any of the actions set forth in this section 10.1(6) (excluding proceedings against a Borrower or Restricted Subsidiary being contested by such Borrower or Restricted Subsidiary in good faith by appropriate proceedings so long as enforcement sought in such proceedings remains stayed, none of the relief sought is granted (either on an interim or permanent basis), and such proceedings are dismissed, stayed or withdrawn within 30 days of such Borrower or Restricted Subsidiary receiving notice of the institution thereof).

- (7) *Execution.* Any one or more persons shall take possession of all or any substantial part of the property of any Borrower or Restricted Subsidiary or any one or more seizures, executions, garnishments, sequestrations, distresses, attachments or other equivalent processes are issued or levied against all or any substantial part of the property of any Borrower or Restricted Subsidiary, in each case in relation to claims in the aggregate in excess of C\$[]¹⁶ (or the Equivalent Amount in another currency).
- (8) *Carry on Business.* Any Borrower or Restricted Subsidiary shall cease or threaten to cease to carry on its business or shall dispose or threaten to dispose of all or substantially all of its assets whether by one transaction or a series of transactions, except as permitted hereunder.
- (9) *Credit Facility Documents.* Any Credit Facility Document shall (except in accordance with its terms), in whole or in material part, terminate, cease to be effective or cease to be the legally valid, binding and enforceable obligation of any Borrower, or any Borrower shall, directly or indirectly, contest in any manner such effectiveness, validity, binding nature or enforceability.
- (10) *Change of Control.* A Change of Control shall occur and, at any time during the period of six months following such Change of Control, a Rating for Finning shall fall below (as the case may be) BBB- or BBB(low).

10.2 Effect.

- (1) *General.* Upon the occurrence and continuance of an Event of Default, except as provided in section 10.2(2), the Administrative Agent:
 - (a) shall, at the request of the Majority Lenders, by notice to Finning cancel all obligations of the Lenders in respect of the Commitments (whereupon no further Accommodations may be made and any Accommodation Request given with respect to an Accommodation occurring on or after the date of such notice or request shall cease to have effect); and

¹⁶ Amount redacted

- (b) shall, at the request of the Majority Lenders, by notice to Finning declare the Obligations to be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrowers.
- (2) *Specific Defaults.* If any Event of Default specified in section 10.1(6) shall occur with respect to any Borrower, then all obligations of the Lenders in respect of the Commitments shall be automatically cancelled and the Obligations shall be forthwith due and payable, all as if the request and notice specified in each of sections 10.2(1)(a) and 10.2(1)(b) had been received and given by the Administrative Agent.
- (3) *Enforcement.* Upon the occurrence of an Event of Default and acceleration of the Obligations, each Agent may, and shall at the request of the Majority Lenders, commence such legal action or proceedings as it may deem expedient, all without any additional notice, presentation, demand, protest, notice of dishonour, or any other action, notice of all of which the Borrowers hereby expressly waive to the extent permitted by Applicable Law. The rights and remedies of the Agents and the Lenders hereunder and under the other Credit Facility Documents are cumulative and are in addition to and not in substitution for any other rights or remedies provided by Applicable Law; provided that nothing herein contained shall permit any Lender to take any steps which, pursuant to this agreement, may only be undertaken by or with the consent of all Lenders or the Majority Lenders.

10.3 Right of Set-Off. If an Event of Default has occurred and is continuing, each of the Lenders is hereby authorized at any time and from time to time to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender to or for the credit or the account of an Obligor against any and all of the obligations of such Obligor now or hereafter existing under this agreement or any other Credit Facility Document to such Lender, irrespective of whether or not such Lender has made any demand under this agreement or any other Credit Facility Document and although such obligations of such Obligor may be contingent or unmaturing or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each the Lenders under this section are in addition to other rights and remedies (including other rights of setoff, consolidation of accounts and bankers' lien) that the Lenders may have. Each Lender agrees to promptly notify the relevant Obligor and the Administrative Agent after any such setoff and application, but the failure to give such notice shall not affect the validity of such setoff and application.

10.4 Currency Conversion After Acceleration. At any time following the occurrence of an Event of Default and the acceleration of the Obligations, each Lender shall be entitled to convert, with two Business Days' prior notice to Finning, its unpaid and outstanding Advances in currencies other than Canadian Dollars, or any of them, to Prime Rate Advances. Any such conversion shall be calculated so that the resulting Prime Rate Advances shall be the Equivalent Amount in Canadian Dollars on the date of conversion of

the amount of such other currency so converted. Any accrued and unpaid interest denominated in any such other currency at the time of any such conversion shall be similarly converted to Canadian Dollars, and such Prime Rate Advances and accrued and unpaid interest thereon shall thereafter bear interest in accordance with Article 3.

ARTICLE 11 THE AGENTS AND THE LENDERS

11.1 Appointment and Authority. Each of the Lenders and the Issuing Bank hereby irrevocably appoints Royal Bank and RBC EL to act on its behalf as, respectively, the Administrative Agent and the European Agent hereunder and under the other Credit Facility Documents and authorizes each Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent and the European 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 Agents, the Lenders and the Issuing Bank, and no Obligor shall have rights as a third party beneficiary of any of such provisions.

11.2 Rights as a Lender. The persons serving as the Agents hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and each may exercise the same as though it were not an Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include each person serving as an Agent hereunder in its individual capacity. Each 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 Obligor or any affiliate thereof as if such person were not an Agent and without any duty to account to the Lenders.

11.3 Exculpatory Provisions.

- (1) Neither Agent shall have any duties or obligations except those expressly set forth herein and in the other Credit Facility Documents. Without limiting the generality of the foregoing, neither Agent:
 - (a) shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;
 - (b) shall 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 Facility Documents that such Agent is required to exercise as directed in writing by the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Credit Facility Documents), but such Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose it to liability or that is contrary to any Credit Facility Document or Applicable Law; and

- (c) shall, except as expressly set forth herein and in the other Credit Facility Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Finning or any of its affiliates that is communicated to or obtained by such Agent or any of its affiliates in any capacity.
- (2) Neither Agent shall be liable to any Lender for any action taken or not taken by it:
- (a) with the consent or at the request of the Majority Lenders (or such other number or percentage of the Lenders as is necessary, or as such Agent believes in good faith is necessary, under the provisions of the Credit Facility Documents); or
 - (b) in the absence of its own gross negligence or wilful misconduct. Each Agent shall be deemed not to have knowledge of any Default unless and until notice describing the Default is given to such Agent by a Borrower or a Lender.
- (3) Except as otherwise expressly specified in this agreement, neither Agent shall be responsible for or have any duty to ascertain or inquire into:
- (a) any statement, warranty or representation made in or in connection with this agreement or any other Credit Facility Document;
 - (b) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith;
 - (c) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default;
 - (d) the validity, enforceability, effectiveness or genuineness of this agreement, any other Credit Facility Document or any other agreement, instrument or document; or
 - (e) the satisfaction of any condition specified in this agreement, other than to confirm receipt of items expressly required to be delivered to such Agent.

11.4 Reliance by Agents. Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of an Accommodation, that by its terms must be fulfilled

to the satisfaction of a Lender or the Issuing Bank, each Agent may presume that such condition is satisfactory to such Lender or the Issuing Bank unless such Agent shall have received notice to the contrary from such Lender or the Issuing Bank prior to the making of such Accommodation. Each Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

11.5 Indemnification of Agents. Each Lender agrees to indemnify each Agent and hold it harmless (to the extent not reimbursed by the Borrowers), rateably according to its Rateable Portion (and not jointly or jointly and severally) from and against any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel, which may be incurred by or asserted against such Agent in any way relating to or arising out of the Credit Facility Documents or the transactions therein contemplated. However, no Lender shall be liable for any portion of such losses, claims, damages, liabilities and related expenses resulting from such Agent's gross negligence or wilful misconduct.

11.6 Delegation of Duties. Each Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Facility Document by or through any one or more sub-agents appointed by such Agent from among the Lenders (including the person serving as Agent) and their respective affiliates. Each 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 Agents shall apply to any such sub-agent and to the Related Parties of the Agents and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Credit Facility as well as activities as Agent. No delegation by an Agent to a sub-agent or Related Party as aforesaid shall relieve such Agent from any of its duties or obligations hereunder, and such Agent shall be responsible for all actions and omissions of any such sub-agent or Related Party.

11.7 Replacement of Agent.

- (1) An Agent may at any time give notice of its resignation to the Lenders, the Issuing Bank and Finning. Upon receipt of any such notice of resignation, the Majority Lenders shall have the right, in consultation with Finning, to appoint a successor, which shall be a Lender having a Commitment to a revolving credit if one or more is established in this agreement and having an office in Toronto, Ontario or Montréal, Québec, or an affiliate of any such Lender with an office in Toronto or Montréal. An Agent may also be removed at any time by the Majority Lenders upon 30 days' notice to such Agent and Finning as long as the Majority Lenders, in consultation with Finning, appoint and obtain the acceptance of a successor within such 30 days, which shall be a Lender having a Commitment to a revolving credit if one or more is established in this agreement and having an office in Toronto or Montréal, or an affiliate of any such Lender with an office in Toronto or Montréal

- (2) If no such successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within 30 days after the retiring 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(1); provided that, if the retiring Agent shall notify Finning and the Lenders that no qualifying person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Credit Facility Documents (except that in the case of any collateral security held by such Agent on behalf of the Lenders under any of the Credit Facility Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through such Agent shall instead be made by or to each Lender directly, until such time as the Majority Lenders appoint a successor Agent as provided for above in the preceding paragraph.
- (3) Upon a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the former Agent, and the former Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Facility Documents (if not already discharged therefrom as provided in the preceding paragraph). The fees payable by Finning to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Finning and such successor. After the termination of the service of the former Agent, the provisions of this section 11.7 and of section 12.4 shall continue in effect for the benefit of such former Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the former Agent was acting as Agent.

11.8 Non-Reliance on Agents and Other Lenders. Each Lender and the Issuing Bank acknowledges that it has, independently and without reliance upon the Agents or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this agreement. Each Lender and the Issuing Bank also acknowledges that it will, independently and without reliance upon the Agents or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this agreement, any other Credit Facility Document or any related agreement or any document furnished hereunder or thereunder.

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 Facility 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 Agents upon the decision of the Majority Lenders (or such other number or percentage of

the Lenders as shall be expressly provided for in the Credit Facility Documents), except that each Lender on its own will be entitled to (i) exercise its rights under section 10.3, and (ii) to file proofs of claim in any bankruptcy, insolvency or similar proceedings against the Borrowers with respect to amounts owing to such Lender (but not to initiate any such proceedings). Accordingly, notwithstanding any of the provisions contained herein or in any collateral security, each of the Lenders hereby covenants and agrees that it shall not be entitled to take any action hereunder or thereunder (except as expressly provided in the preceding sentence) including, without limitation, any declaration of default hereunder or thereunder but that any such action shall be taken only by the Agents with the prior written agreement of the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Credit Facility Documents). Each of the Lenders hereby further covenants and agrees that upon any such written agreement being given, it shall co-operate fully with the Agents to the extent requested by each Agent. Notwithstanding the foregoing, in the absence of instructions from the Lenders and where in the sole opinion of an Agent, acting reasonably and in good faith, the exigencies of the situation warrant such action, an Agent may without notice to or consent of the Lenders take such action on behalf of the Lenders as it deems appropriate or desirable in the interest of the Lenders.

11.10 No Other Duties, etc. Anything herein to the contrary notwithstanding, none of the bookrunners, arrangers or holders of similar titles, if any, specified in this agreement shall have any powers, duties or responsibilities under this agreement or any of the other Credit Facility Documents, except in its capacity, as applicable, as an Agent or a Lender hereunder.

ARTICLE 12 MISCELLANEOUS

12.1 Sharing of Payments; Records.

- (1) *Swingline Advances.* Unless the Swingline Lender and the Majority Lenders agree otherwise, if an Event of Default occurs and any Swingline Advances are outstanding, and to the extent that the Swingline Lender has not been reimbursed by Finning for such Swingline Advances and interest as set forth below, the Swingline Lender may, by notice to Finning and the Administrative Agent, terminate the Swingline Commitment (whereupon such formerly segregated portion of its Commitment will be treated the same as the balance of its Commitment), in which case adjustments shall be made among the Lenders as set forth in this section 12.1(1).
 - (a) Each Lender, other than the Swingline Lender, shall promptly upon receipt of notification of such fact from the Administrative Agent purchase from the Swingline Lender (for cash at face value) a participation in the unreimbursed Swingline Advances (including interest then accrued thereon and unpaid by Finning) as shall be necessary to cause such purchasing Lender to be owed its Rateable Portion of the Canadian Dollar Equivalent Principal Outstanding of all outstanding Accommodations (including such unreimbursed Swingline Advances) and interest, and shall promptly deliver to the

Administrative Agent for the account of the Swingline Lender in immediately available funds the purchase price for such participation.

- (b) The obligations of each Lender under section 12.1(1)(a) are unconditional, shall not be subject to any qualification or exception whatsoever and shall be performed in accordance with the terms and conditions of this agreement under all circumstances including:
 - (i) any lack of validity or enforceability of Finning's obligations;
 - (ii) the occurrence of any Default or Event of Default or the exercise of any rights by either Agent under section 10.2; and
 - (iii) the absence of any demand for payment being made, any proof of claim being filed, any proceeding being commenced or any judgment being obtained by the Swingline Lender against Finning.

- (c) If a Lender (in this section 12.1(1), a "**Defaulting Lender**") fails to make payment on the due date therefor of any amount due from it for the account of the Swingline Lender pursuant to section 12.1(1)(a) (the balance thereof for the time being unpaid being referred to in this section 12.1(1)(c) as an "**overdue amount**") then, until the Swingline Lender has received payment of that amount (plus interest as provided below) in full (and without in any way limiting the rights of the Swingline Lender in respect of such failure):
 - (i) the Swingline Lender shall be entitled to receive (*pari passu* with any entitlement of the Issuing Bank under section 12.1(2)(c)(i)) any payment which the Defaulting Lender would otherwise have been entitled to receive in respect of the Credit Facility or otherwise in respect of any Credit Facility Document; and
 - (ii) the overdue amount shall bear interest payable by the Defaulting Lender to the Swingline Lender at the rate payable by Finning in respect of the Obligations which gave rise to such overdue amount.

- (d) The Swingline Lender shall, forthwith upon its receipt of any reimbursement (in whole or in part) by Finning for any unreimbursed Swingline Advances or interest thereon in relation to which other Lenders have purchased a participation pursuant to section 12.1(1)(a), or of any other amount from Finning or any other person in respect of such payment, transfer to such other Lender such other Lender's Rateable Portion of such reimbursement or other amount. In the event that any receipt by the Swingline Lender of any reimbursement or other amount is found to have been a transfer in fraud of creditors

or a preferential payment under any applicable insolvency legislation or is otherwise required to be returned, such Lender shall promptly return to the Swingline Lender any portion thereof previously transferred to it by the Swingline Lender, without interest to the extent that interest is not payable by the Swingline Lender in connection therewith.

- (2) *Fronted LC Payments.* Unless the Issuing Bank and the Majority Lenders agree otherwise, if an Event of Default occurs and any Fronted Letter of Credit is thereafter drawn upon which results in a payment by the Issuing Bank thereunder (in this section 12.1(2), an "**LC Payment**"), and to the extent that the Issuing Bank has not been reimbursed by the relevant Borrower for such LC Payment and interest as set forth below, adjustments shall be made among the Lenders as set forth in this section 12.1(2).
- (a) Each Lender shall promptly upon receipt of notification of such fact from the Applicable Agent purchase from the Issuing Bank (for cash at face value) a participation in the unreimbursed LC Payment (including interest then accrued thereon and unpaid by the relevant Borrower) as shall be necessary to cause such purchasing Lender to be owed its Rateable Portion of such unreimbursed LC Payment and interest, and shall promptly deliver to the Applicable Agent for the account of the Issuing Bank in immediately available funds the purchase price for such participation.
- (b) The obligations of each Lender under section 12.1(2)(a) are unconditional, shall not be subject to any qualification or exception whatsoever and shall be performed in accordance with the terms and conditions of this agreement under all circumstances including:
- (i) any lack of validity or enforceability of any Borrower's obligations;
- (ii) the occurrence of any Default or Event of Default or the exercise of any rights by either Agent under section 10.2; and
- (iii) the absence of any demand for payment being made, any proof of claim being filed, any proceeding being commenced or any judgment being obtained by the Issuing Bank against any Borrower.
- (c) If a Lender (in this section 12.1(2), a "**Defaulting Lender**") fails to make payment on the due date therefor of any amount due from it for the account of the Issuing Bank pursuant to section 12.1(2)(a) (the balance thereof for the time being unpaid being referred to in this section 12.1(2)(c) as an "**overdue amount**") then, until the Issuing Bank has received payment of that amount (plus interest as provided

below) in full (and without in any way limiting the rights of the Issuing Bank in respect of such failure):

- (i) the Issuing Bank shall be entitled to receive (*pari passu* with any entitlement of the Swingline Lender under section 12.1(1)(c)(i)) any payment which the Defaulting Lender would otherwise have been entitled to receive in respect of the Credit Facility or otherwise in respect of any Credit Facility Document; and
 - (ii) the overdue amount shall bear interest payable by the Defaulting Lender to the Issuing Bank at the rate payable by the relevant Borrower in respect of the Obligations which gave rise to such overdue amount.
- (d) The Issuing Bank shall, forthwith upon its receipt of any reimbursement (in whole or in part) by the relevant Borrower for any unreimbursed LC Payments or interest thereon in relation to which other Lenders have purchased a participation pursuant to section 12.1(2)(a), or of any other amount from such Borrower or any other person in respect of such payment, transfer to such other Lender such other Lender's Rateable Portion of such reimbursement or other amount. In the event that any receipt by the Issuing Bank of any reimbursement or other amount is found to have been a transfer in fraud of creditors or a preferential payment under any applicable insolvency legislation or is otherwise required to be returned, such Lender shall promptly return to the Issuing Bank any portion thereof previously transferred to it by the Issuing Bank, without interest to the extent that interest is not payable by the Issuing Bank in connection therewith.
- (3) Sharing of Payments. 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 Accommodations and accrued interest thereon or other obligations hereunder greater than its pro rata share thereof as provided herein, then the Lender receiving such payment or other reduction shall:
- (a) notify the Administrative Agent of such fact; and
 - (b) purchase (for cash at face value) participations in the Accommodations and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders rateably in accordance with the aggregate amount of principal of and accrued interest on their respective Accommodations and other amounts owing them;

provided that:

- (c) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest;
- (d) the provisions of this section shall not be construed to apply to:
 - (i) any payment made by any Obligor pursuant to and in accordance with the express terms of this agreement; or
 - (ii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Accommodations to any assignee or participant, other than to any Obligor or any affiliate of an Obligor (as to which the provisions of this section shall apply); and
- (e) the provisions of this section shall not be construed to apply to:
 - (i) any payment made while no Event of Default has occurred and is continuing in respect of obligations of an Obligor to such Lender that do not arise under or in connection with the Credit Facility Documents;
 - (ii) any payment made in respect of an obligation that is secured by a Permitted Lien or that is otherwise entitled to priority over an Obligor's obligations under or in connection with the Credit Facility Documents;
 - (iii) any reduction arising from an amount owing to an Obligor upon the termination of derivatives entered into between the Obligor and such Lender; or
 - (iv) any payment to which such Lender is entitled as a result of any form of credit protection obtained by such Lender.
- (4) *Records.* The Principal Outstanding and Canadian Dollar Equivalent Principal Outstanding under the Credit Facility, the unpaid interest accrued thereon, the interest rate or rates applicable to any unpaid principal amounts, the duration of such application, the date of acceptance or issue, Face Amount and maturity of all Bankers' Acceptances and Letters of Credit and the Commitments shall at all times be ascertained from the records of the Applicable Agent, which shall be conclusive absent demonstrated error.

12.2 Amendments, etc.

- (1) *Amendments - General.* Subject to section 12.2(2), no amendment or waiver of any provision of this agreement or of any other Credit Facility Document, nor any consent to any departure by any Borrower or Restricted Subsidiary herefrom or therefrom, shall in any event be effective unless the same shall be in writing and signed by the Majority Lenders (or by the Administrative Agent on their authorization), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.
- (2) *Amendments - Unanimous.* No instrument shall, unless in writing and signed by all the Lenders (or by the Administrative Agent on their authorization):
 - (a) waive any of the conditions specified in Article 6;
 - (b) increase the Commitment of any Lender or subject any Lender to any additional financial obligation;
 - (c) change the principal of any Accommodation, or reduce the interest on or discount rate applicable to any Accommodation or any fees hereunder;
 - (d) except to the extent set out in section 2.1(8), postpone the scheduled date of payment of the principal amount of any Accommodation, or any interest thereon or any fees payable in respect thereof, or waive or excuse any such payment;
 - (e) subordinate the Obligations or any portion thereof to any Indebtedness;
 - (f) amend the definition of "**Majority Lenders**" or this section 12.2(2);
 - (g) release, or amend in any material respect, any Facility Guarantee;
 - (h) amend the definition of "**Rateable Portion**" or otherwise change or waive any provision requiring pro rata treatment of the Lenders or relating to the sharing of payments by Lenders; or
 - (i) except as permitted by section 2.1(10) and section 2.1(11), permit a change in a Borrower or an assignment or transfer of any of its rights or obligations under any Credit Facility Document.
- (3) *Amendments - Agents.* No amendment, waiver or consent shall, unless in writing and approved by the relevant Agent in addition to the Majority Lenders, affect the rights or duties of an Agent under any Credit Facility Document.

- (4) *Amendments – Swingline Lender.* No amendment, waiver or consent shall, unless approved by the Swingline Lender, affect the rights or duties of the Swingline Lender with respect to Swingline Advances.
- (5) *Issuing Bank.* No amendment, waiver or consent shall, unless approved by the Issuing Bank, affect the rights or obligations of the Issuing Bank with respect to Fronted Letters of Credit.
- (6) *Other Approvals.* For greater certainty, any approval of a person specifically required by any of sections 12.2(3) to (5), inclusive, shall be in addition to any other approval required by this agreement.
- (7) *Notice, etc.* The Administrative Agent will advise the Borrowers in writing of the Lenders' decision with respect to matters contemplated by this section 12.2, and if requested will provide the Borrowers with the voting details. The Borrowers shall be entitled to rely on any such written communication for the substance thereof, without further enquiry.

12.3 Notices, etc.

- (1) *Notices Generally.* Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in section 12.3(2) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier to the addresses or telecopier numbers specified below or (if to a Lender) to it at its address or telecopier number specified in schedule 1 annexed hereto or (if to an Obligor other than Finning) in care of Finning.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given on a Business Day between 9:00 a.m. and 5:00 p.m. local time where the recipient is located, shall be deemed to have been given at 9:00 a.m. on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in section 12.3(2) below, shall be effective as provided in said section 12.3(2).

The addresses referred to above are as follows:

if to the Borrowers:

c/o Finning International Inc.,
Suite 1000 Park Place
666 Burrard Street
Vancouver, BC
V6C 2X8

Attention: Vice-President & Treasurer
Fax: (604) 331-4852

if to the Agents:

Royal Bank of Canada
[]¹⁷

Attn: []
Fax: []

- and -

RBC Europe Limited
[]

Attn: []
Fax: []

- (2) *Electronic Communications.* Notices and other communications to the Lenders and the Issuing Bank hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Applicable Agent; provided that the foregoing shall not apply to notices to any Lender of Accommodations to be made if such Lender has notified the Applicable Agent that it is incapable of receiving notices by electronic communication. The Applicable Agent or the relevant Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless the Applicable Agent otherwise prescribes:

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

¹⁷ Addresses redacted.

of notification that such notice or communication is available and identifying the website address therefor.

- (3) *Change of Address, etc.* Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.
- (4) *Deliveries.* All deliveries of financial statements and other documents to be made by the relevant Borrower to the Lenders hereunder shall be made by making delivery of such financial statements and documents to the Applicable Agent (in sufficient copies for the Agents and each Lender) to the address in section 12.3(1) or to such other address as the Applicable Agent may from time to time notify to such Borrower. All such deliveries shall be effective only upon actual receipt.
- (5) *Notice Irrevocable.* Each Notice shall be irrevocable and binding on the Borrowers.
- (6) *Reliance.* Each Agent may act upon the basis of telephonic notice believed by it in good faith to be from a Borrower prior to receipt of a Notice. In the event of conflict between such Agent's record of the applicable terms of any Accommodation and such Notice, such Agent's record shall prevail, absent demonstrated error.
- (7) *No Waiver; Remedies.* No failure on the part of an Agent or any of the Lenders to exercise, and no delay in exercising, any right under any Credit Facility Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right under any Credit Facility Document preclude any other or further exercise thereof or the exercise of any other right. The remedies herein and therein provided are cumulative and not exclusive of any remedies provided by Applicable Law.

12.4 Expenses and Indemnity.

- (1) *Costs and Expenses.* Finning shall pay:
 - (a) all reasonable out-of-pocket expenses incurred by the Agents and their affiliates, including the reasonable fees, charges and disbursements of counsel for the Agents, in connection with the syndication of the Credit Facility, the preparation, negotiation, execution, delivery and administration of this agreement and the other Credit Facility Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated);
 - (b) all reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of

any Fronted Letter of Credit or any demand for payment thereunder;
and

- (c) all reasonable out-of-pocket expenses incurred by the Agents, any Lender or the Issuing Bank, including the reasonable fees, charges and disbursements of counsel, in connection with the enforcement or protection of its rights in connection with this agreement and the other Credit Facility Documents, including its rights under this section, or in connection with the Accommodations made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Accommodations.
- (2) *Indemnification by Finning.* Finning shall indemnify the Agents (and any sub-agents thereof), each Lender and the Issuing Bank and each Related Party of any of the foregoing persons (each such person being called an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Obligor arising out of, in connection with, or as a result of:
- (a) the execution or delivery of this agreement, any other Credit Facility Document or any agreement or instrument contemplated hereby or thereby, the performance or non-performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation or non-consummation of the transactions contemplated hereby or thereby;
 - (b) any Accommodation or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Bank to honour a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit);
 - (c) any actual or alleged presence or Release of Hazardous Materials on or from any property owned or operated by any Obligor, or any Environmental Liability related in any way to any Obligor; or
 - (d) 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 an Obligor and regardless of whether any Indemnitee is a party thereto;

provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses:

- (i) result from the gross negligence or wilful misconduct of such Indemnitee; or
- (ii) result from a claim brought by an Obligor against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Credit Facility Document if such Obligor has obtained a final and nonappealable judgment in its favour on such claim as determined by a court of competent jurisdiction;

nor shall it be available in respect of matters specifically addressed in sections 9.1, 9.2 and 12.4(1).

- (3) *Reimbursement by Lenders.* To the extent that a Borrower for any reason fails to indefeasibly pay any amount required under section 12.4(1) or (2) to be paid by it to an Agent (or any sub-agent thereof), the Issuing Bank or any Related Party of any of the foregoing, each Lender severally agrees to pay to such Agent (or any such sub-agent), the Issuing Bank or such Related Party, as the case may be, such Lender's Rateable Portion (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 such Agent (or any such sub-agent) or the Issuing Bank in its capacity as such, or against any Related Party of any of the foregoing acting for such Agent (or any such sub-agent) or Issuing Bank in connection with such capacity. The obligations of the Lenders under this section 12.4(3) are subject to the other provisions of this agreement concerning several liability of the Lenders.
- (4) *Waiver of Consequential Damages. etc.* To the fullest extent permitted by Applicable Law, the Obligors shall 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 Facility Document or any agreement or instrument contemplated hereby (or any breach thereof), the transactions contemplated hereby or thereby, any Accommodation or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this agreement or the other Credit Facility Documents or the transactions contemplated hereby or thereby.
- (5) *Payments.* All amounts due under this section shall be payable promptly after demand therefor. A certificate of the Applicable Agent or a Lender setting forth the amount or amounts owing to such Agent, Lender or a sub-agent or Related Party, 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 relevant Borrower shall be conclusive absent manifest error.

12.5 Judgment Currency.

- (1) *Exchange Rate.* If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder to an Agent or Lender in one currency (in this section 12.5, the "**Original Currency**") into another currency (in this section 12.5, the "**Judgment Currency**"), the parties agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures such Agent or Lender could purchase the Original Currency with the Judgment Currency on the Business Day preceding that on which final judgment is paid or satisfied.
- (2) *Obligation.* The obligations of a Borrower in respect of any sum due in the Original Currency from it to an Agent or Lender under any Credit Facility Document shall, notwithstanding any judgment in any Judgment Currency, be discharged only to the extent that, on the Business Day following receipt by such Agent or Lender of any sum adjudged to be so due in such Judgment Currency, such Agent or Lender may in accordance with normal banking procedures purchase the Original Currency with such Judgment Currency. If the amount of the Original Currency so purchased is less than the sum originally due to such Agent or Lender in the Original Currency, the relevant Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify such Agent or Lender against such loss and, if the amount of the Original Currency so purchased exceeds the sum originally due to such Agent or Lender in the Original Currency, such Agent or Lender agrees to remit such excess to such Borrower.

12.6 Governing Law, etc.

- (1) *Governing Law.* This agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.
- (2) *Submission to Jurisdiction.* Each Obligor irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the courts of the Province of British Columbia, and any appellate court having jurisdiction over any appeal therefrom, in any action or proceeding arising out of or relating to this agreement or any other Credit Facility Document, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this agreement or in any other Credit Facility Document shall affect any right

that an Agent or any Lender may otherwise have to bring any action or proceeding relating to this agreement or any other Credit Facility Document against any Obligor or its properties in the courts of any jurisdiction.

- (3) *Waiver of Venue.* Each Obligor irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this agreement or any other Credit Facility Document in any court referred to in section 12.6(2). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defence of an inconvenient forum to the maintenance of such action or proceeding in any such court.

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

12.8 Successors and Assigns.

- (1) *Successors and Assigns Generally.* The provisions of this agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Obligor may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except:
 - (a) to an Eligible Assignee in accordance with the provisions of section 12.8(2);
 - (b) by way of participation in accordance with the provisions of section 12.8(4); or
 - (c) by way of pledge or assignment of a security interest subject to the restrictions of section 12.8(6)

(and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this agreement, expressed or implied, shall be construed to confer upon any person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in section 12.8(4) and, to the extent expressly contemplated hereby, the Related Parties of each Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this agreement.

- (2) *Assignments by Lenders.* Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this agreement (including all or a portion of its Commitment and the Accommodations at the time owing to it); provided that:
- (a) except if an Event of Default has occurred and is continuing or in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Accommodations at the time owing to it or in the case of an assignment to a Lender or an affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment being assigned (which for this purpose includes Accommodations outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Accommodations of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "**Trade Date**" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than C\$5 million (and in integral multiples of C\$1 million), unless each of the Administrative Agent and, so long as no Default has occurred and is continuing, Finning otherwise consents to a lower amount (each such consent not to be unreasonably withheld or delayed);
 - (b) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this agreement with respect to the Accommodation or the Commitment assigned;
 - (c) any assignment must be approved by any Issuing Bank (such approval not to be unreasonably withheld or delayed) unless the person that is the proposed assignee is itself already a Lender, and must be approved by the Swingline Lender (such approval not to be unreasonably withheld);
 - (d) any assignment must be approved by the Administrative Agent (such approval not to be unreasonably withheld or delayed) unless:
 - (i) the proposed assignee is itself already a Lender; or

- (ii) the proposed assignee is a bank whose senior, unsecured, non-credit enhanced, long term debt is rated at least A3, A- or A low by at least two of Moody's, S&P and DBRS, respectively;
- (e) any assignment must be approved by Finning (such approval not to be unreasonably withheld or delayed) unless a Default has occurred and is continuing;
- (f) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500 and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an administrative questionnaire in a form supplied by the Administrative Agent; and
- (g) in the case of a partial assignment of its Commitment by a Lender under this section 12.8(2), such Lender, after giving effect to such partial assignment, shall continue to have a Commitment of at least C\$5 million.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to section 12.8(3), from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this agreement and the other Credit Facility Documents, including any collateral security, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Article 9 and section 12.4, and shall continue to be liable for any breach of this agreement by such Lender, with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this agreement that does not comply with this section 12.8(2) shall be treated for purposes of this agreement as a sale by such Lender of a participation in such rights and obligations in accordance with section 12.8(4). Any payment by an assignee to an assigning Lender in connection with an assignment or transfer shall not be or be deemed to be a repayment by the relevant Borrower(s) or a new Accommodation to the relevant Borrower(s). If any Lender shall make an assignment under this section 12.8(2) and, as a result of circumstances existing at the date of such assignment, a Borrower would be obliged to make a payment to the assignee under section 9.2, then the assignee shall only be entitled to receive payment under section 9.2 to the same extent as the assignor Lender would have been so entitled if the assignment had not occurred.

- (3) *Register.* The Administrative Agent shall maintain at one of its offices in Toronto, Ontario or Montréal, Québec a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Accommodations owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, absent manifest error, and the Borrowers, the Agents and the Lenders may treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by any Borrower and Lender, at any reasonable time and from time to time upon reasonable prior notice.
- (4) *Participations.* Any Lender may at any time, without the consent of, or notice to, the Borrowers or the Administrative Agent, sell participations to any financial institution (including any Fund, but other than an Obligor or any affiliate of an Obligor) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this agreement (including all or a portion of its Commitment and/or the Accommodations owing to it); provided that:
- (a) such Lender's obligations under this agreement shall remain unchanged;
 - (b) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations;
 - (c) the Borrowers, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this agreement; and
 - (d) except if an Event of Default has occurred and is continuing or in the case of a sale of a participation in the entire remaining amount of such Lender's Commitment and the Accommodations at the time owing to it or in the case of a sale of a participation to a Lender or an affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment being sold by way of participation (which for this purpose includes Accommodations outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Accommodation of such Lender subject to each such sale (determined as of the effective date of such sale) shall not be less than C\$5 million (and in integral multiples of C\$1 million). Any payment by a Participant to a Lender in connection with a sale of a participation shall not be or be deemed to be a repayment by the relevant Borrower(s) or a new Accommodation to the relevant Borrower(s).

Subject to section 12.8(5), the Borrowers acknowledge that each Participant may be entitled, by virtue of its participation interest, to claim through the grantor Lender the benefits of section 9.2 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to section 12.8(2).

- (5) *Limitations upon Participant Rights.* A Participant shall not be entitled to receive any greater payment under sections 9.1 and 9.2 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant.
- (6) *Certain Pledges.* Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this agreement to secure obligations of such Lender, but no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

12.9 Conflict. In the event of a conflict between the provisions of this agreement and the provisions of any other Credit Facility Document, the provisions of this agreement shall prevail.

12.10 Confidentiality.

- (1) Each Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed:
 - (a) to it, its affiliates and its and its affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential);
 - (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority);
 - (c) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process;
 - (d) to any other party hereto;
 - (e) in connection with the exercise of any remedies hereunder or under any other Credit Facility Document or any action or proceeding relating to this agreement or any other Credit Facility Document or the enforcement of rights hereunder or thereunder;
 - (f) subject to an agreement containing provisions substantially the same as those of this section, to:

- (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this agreement; or
 - (ii) any actual or prospective counterparty (or its advisors) to any swap, derivative, credit-linked note or similar transaction relating to any Borrower and its obligations;
- (g) with the consent of Finning; or
- (h) to the extent such Information:
 - (i) becomes publicly available other than as a result of a breach of this section; or
 - (ii) becomes available to the Administrative Agent or any Lender on a non-confidential basis from a source other than an Obligor.
- (2) For purposes of this section, "Information" means all information received in connection with this agreement from any Obligor relating to any Obligor or any of its subsidiaries or any of their respective businesses, other than any such information that is available to an Agent or Lender on a non-confidential basis prior to such receipt. Any person required to maintain the confidentiality of Information as provided in this section shall be considered to have complied with its obligation to do so if such person has exercised the same degree of care to maintain the confidentiality of such Information as such person would accord to its own confidential information. In addition, the Agents may disclose to any agency or organization that assigns standard identification numbers to loan facilities such basic information describing the Credit Facility as is necessary to assign unique identifiers (and, if requested, supply a copy of this agreement), it being understood that the person to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to make available to the public only such Information as such person normally makes available in the course of its business of assigning identification numbers.
- (3) In addition, and notwithstanding anything herein to the contrary, the Agents may provide the information described on Schedule 4-B concerning the Borrowers and the Credit Facility to Loan Pricing Corporation and/or other recognized trade publishers of information for general circulation in the loan market.

12.11 AML Legislation.

- (1) Each Lender and each Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers that pursuant to the requirements of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada)*, the

Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA) or any other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" Applicable Laws (collectively, including any guidelines or orders thereunder, "AML Legislation"), it may be required to obtain, verify and record information that identifies each Borrower and each subsidiary of each Borrower, which information includes the name and address of each such person and such other information that will allow such Lender or Agent, as applicable, to identify each such person in accordance with AML Legislation (including information regarding such person's directors, authorized signing officers, or other persons in control of each such person).

- (2) Each Borrower shall provide, to the extent commercially reasonable, such information and take such actions as are reasonably requested by either Agent or any Lender in order to assist the Agents and the Lenders in maintaining compliance with AML Legislation. Each Borrower shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or either Agent (for itself and not on behalf of any Lender), or any prospective assignee of a Lender or Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.
- (3) If, upon the written request of any Lender, either Agent (for itself and not on behalf of any Lender) has ascertained the identity of a Borrower or any subsidiary of a Borrower or any authorized signatories of such a person for the purposes of applicable AML Legislation on such Lender's behalf, then such Agent:
 - (a) shall be deemed to have done so as an agent for such Lender, and this agreement shall constitute a "written agreement" in such regard between such Lender and such Agent within the meaning of applicable AML Legislation; and
 - (b) shall provide to such Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.
- (4) Notwithstanding anything to the contrary in this section 12.11, each of the Lenders agrees that neither Agent has any obligation to ascertain the identity of any Borrower or any subsidiary or any authorized signatories of any such person, on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from any such person or any such authorized signatory in doing so.

12.12 Sanctions.

- (1) *General.* Neither Finning nor any Group Company or any director, officer, employee, agent, affiliate or representative of Finning or any Group

Company, is an individual or entity (in this section, “**Person**”) that is, or is owned or controlled by a Person that is:

- (a) the subject of any sanctions administered or enforced by the U.S. Government (including, without limitation, OFAC), the Canadian Government, the United Nations Security Council, the European Union, Her Majesty’s Treasury, or other relevant sanctions authority (collectively, “**Sanctions**”); nor
 - (b) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Burma/Myanmar, Cuba, Iran, North Korea, Sudan and Syria).
- (2) *Dealings.* Neither Finning nor any Group Company has engaged in, is now engaged in, or will or intends to engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.
- (3) *Use of Proceeds.* Neither Finning nor any Group Company will, directly or indirectly, use the proceeds of the Credit Facility, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person:
- (a) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or
 - (b) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the Credit Facility, whether as agent, arranger, underwriter, advisor, investor or otherwise).

12.13 Anti-Corruption Laws.

- (1) *General.* Neither Finning nor any Group Company nor any of their respective directors, officers, employees, agents, affiliates or representatives, or any person associated with or acting on behalf of Finning or any Group Company, has violated or is in violation of any provision of any applicable law, rule, regulation or other legally binding measure relating to the prevention of bribery, corruption, fraud or similar related activities in any country, including (without limitation) the U.S. Foreign Corrupt Practices Act of 1977, as amended, the U.K. Bribery Act 2010, the Corruption of Foreign Public Officials Act (Canada), or any provision of the anti-corruption laws, rules, regulations, conventions or guidelines of the European Union, the United Nations, the Organization for Economic Co-operation and Development or any Authority in the jurisdictions in which Finning or a Group Company conducts its business (the “**Anti-Corruption Laws**”).

- (2) *Conduct of Business; No Actions.* Each Group Company has conducted and will continue to conduct its businesses at all times in compliance with applicable Anti-Corruption Laws and has instituted and maintained, and will continue to maintain, policies and procedures designed to promote and ensure, and which are reasonably expected to promote and ensure, continued compliance with such applicable Anti-Corruption Laws. No action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving any Group Company with respect to the Anti-Corruption Laws is pending or, to the best knowledge of Finning, threatened or contemplated.
- (3) *Use of Proceeds.* Neither Finning nor any Group Company will, directly or indirectly, use the proceeds of the Credit Facility, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person in any other manner that will result in a violation of Anti-Corruption Laws by any Person (including any Person participating in the Credit Facility, whether as agent, arranger, underwriter, advisor, investor or otherwise).

12.14 Severability. The provisions of this agreement are intended to be severable. If any provision of this agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

12.15 Prior Understandings. This agreement supersedes all prior understandings and agreements, whether written or oral, among the parties relating to the transactions provided for herein.

12.16 Time of Essence. Time shall be of the essence hereof.

12.17 Counterparts.

- (1) *Counterparts: Integration: Effectiveness.* This agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This agreement and the other Credit Facility Documents and any separate letter agreements with respect to fees payable to the Agents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Article 6 of this agreement, this agreement shall become effective when it has been executed by the Agents and when the Administrative Agent has received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this agreement by telecopy or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this agreement.

- (2) *Electronic Execution of Assignments.* The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including Parts 2 and 3 of the *Personal Information Protection and Electronic Documents Act* (Canada), the *Electronic Commerce Act*, 2000 (Ontario) and other similar federal or provincial laws based on the *Uniform Electronic Commerce Act* of the Uniform Law Conference of Canada or its *Uniform Electronic Evidence Act*, as the case may be.

IN WITNESS WHEREOF the parties have caused this 2017 amended and restated credit agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

(execution commences on the following page)

BORROWERS:

FINNING INTERNATIONAL INC.

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

FINNING CHILE S.A.

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

FINNING ARGENTINA S.A.

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

FINNING SOLUCIONES MINERAS S.A.

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

BORROWERS (continued):

FINNING (UK) LTD.

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

MONCOUVER S.A.

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

FINNING (IRELAND) LIMITED

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

ADMINISTRATIVE AGENT:

ROYAL BANK OF CANADA

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

EUROPEAN AGENT:

RBC EUROPE LIMITED

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

LENDERS:

CANADIAN LENDERS:

ROYAL BANK OF CANADA

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

THE TORONTO-DOMINION BANK

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

THE BANK OF NOVA SCOTIA

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

CITIBANK, N.A., Canadian Branch

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

CANADIAN LENDERS (continued):

**CANADIAN IMPERIAL BANK OF
COMMERCE**

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

**THE BANK OF TOKYO-MITSUBISHI
UFJ, LTD., CANADA BRANCH**

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

BANK OF MONTREAL

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

**BANK OF AMERICA, N.A., Canada
Branch**

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

CANADIAN LENDERS (continued):

HSBC BANK CANADA

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

WELLS FARGO BANK, N.A., Canadian Branch

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

RELATED EUROPEAN LENDERS:

ROYAL BANK OF CANADA

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

TD BANK EUROPE LTD.

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

**THE TORONTO-DOMINION BANK,
London Branch**

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

THE BANK OF NOVA SCOTIA

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

RELATED EUROPEAN LENDERS (continued):

CITIBANK, N.A., London Branch

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

**CANADIAN IMPERIAL BANK OF
COMMERCE, London Branch**

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

**THE BANK OF TOKYO-MITSUBISHI
UFJ, LTD., London Branch**

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

BANK OF MONTREAL, London Branch

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

RELATED EUROPEAN LENDERS (continued):

BANK OF AMERICA, N.A.

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

HSBC BANK CANADA

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

WELLS FARGO BANK, N.A., Canadian Branch

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

RELATED US LENDERS:

ROYAL BANK OF CANADA

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

**THE TORONTO-DOMINION BANK,
New York Branch**

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

THE BANK OF NOVA SCOTIA

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

CITIBANK, N.A.

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

RELATED US LENDERS (continued):

**CANADIAN IMPERIAL BANK OF
COMMERCE, NEW YORK BRANCH**

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

BANK OF MONTREAL, Chicago Branch

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

**THE BANK OF TOKYO-MITSUBISHI
UFJ, LTD., New York Branch**

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

BANK OF AMERICA, N.A.

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

RELATED US LENDERS (continued):

HSBC BANK CANADA

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

WELLS FARGO BANK, N.A., Canadian Branch

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

**SCHEDULE 1
PART ONE - ADDRESSES¹⁸**

CANADIAN LENDERS

LENDER	PRIMARY CONTACT	SECONDARY CONTACT
Royal Bank of Canada Canadian Lending Office: []	[]	[]
The Toronto-Dominion Bank Canadian Lending Office: []	[]	[]
The Bank of Nova Scotia Canadian Lending Office: []	[]	[]
Citibank, N.A., Canadian Branch Canadian Lending Office: []	[]	[]
Canadian Imperial Bank of Commerce Canadian Lending Office: []	[]	[]
The Bank of Tokyo- Mitsubishi UFJ, Ltd., Canada Branch Canadian Lending Office: []	[]	[]
Bank of Montreal Canadian Lending Office: []	[]	[]
Bank of America, N.A., Canada Branch Canadian Lending Office: []	[]	[]
HSBC Bank Canada Canadian Lending Office: []	[]	[]

¹⁸ Contact addresses, names, telephone and fax numbers and email addresses redacted.

LENDER	PRIMARY CONTACT	SECONDARY CONTACT
Wells Fargo Bank, N.A., Canadian Branch Canadian Lending Office: []	[]	[]

RELATED EUROPEAN LENDERS

LENDER	PRIMARY CONTACT	SECONDARY CONTACT
Royal Bank of Canada European Lending Office: []	[]	[]
TD Bank Europe Ltd. European Lending Office: []	[]	[]
The Toronto-Dominion Bank, London Branch European Lending Office: []	[]	[]
The Bank of Nova Scotia European Lending Office: []	[]	[]
Citibank, N.A., London Branch European Lending Office: []	[]	[]
Canadian Imperial Bank of Commerce, London Branch European Lending Office: []	[]	[]
The Bank of Tokyo-Mitsubishi UFJ, Ltd., London Branch European Lending Office: []	[]	[]
Bank of Montreal, London Branch European Lending Office: []	[]	[]
Bank of America, N.A. European Lending Office: []	[]	[]
HSBC Bank Canada European Lending Office: []	[]	[]
Wells Fargo Bank, N.A., Canadian Branch European Lending Office:	[]	[]

LENDER	PRIMARY CONTACT	SECONDARY CONTACT
[]		

RELATED US LENDERS

LENDER	PRIMARY CONTACT	SECONDARY CONTACT
Royal Bank of Canada US Lending Office: []	[]	[]
The Toronto-Dominion Bank, New York Branch US Lending Office: []	[]	[]
The Bank of Nova Scotia US Lending Office: []	[]	[]
Citibank, N.A. US Lending Office: []	[]	[]
Canadian Imperial Bank of Commerce, New York Branch US Lending Office: []	[]	[]
The Bank of Tokyo-Mitsubishi UFJ, Ltd, New York Branch US Lending Office: []	[]	[]
Bank of Montreal, Chicago Branch US Lending Office: []	[]	[]
Bank of America, N.A. US Lending Office: []	[]	[]
HSBC Bank Canada US Lending Office: []	[]	[]
Wells Fargo Bank, N.A., Canadian Branch US Lending Office: []	[]	[]

**SCHEDULE 1
PART TWO - COMMITMENTS¹⁹**

Institution	Title	Commitment
Royal Bank of Canada	Co-Lead Arranger, Sole Bookrunner & Administrative Agent	C\$[]
The Toronto-Dominion Bank	Co-Lead Arranger & Documentation Agent	C\$[], of which C\$[] will be for Swingline Advances only unless and until the Swingline Commitment has been terminated
The Bank of Nova Scotia	Co-Lead Arranger & Syndication Agent	C\$[]
Citibank N.A., Canadian Branch		C\$[]
Canadian Imperial Bank of Commerce		C\$[]
The Bank of Tokyo-Mitsubishi UFJ, Ltd., Canada Branch		C\$[]
Bank of Montreal		C\$[]
Bank of America, N.A., Canada Branch		C\$[]
HSBC Bank Canada		C\$[]
Wells Fargo Bank, N.A., Canadian Branch		C\$[]

¹⁹ Specific commitment amounts of each lender redacted.

TOTAL		C\$1,000,000,000

(ii) () Bankers' Acceptances (or BA Equivalent Advances pursuant to section 4.11 of the Credit Agreement)

<u>Face Amount</u>	<u>Terms in Months</u>	<u>Rollover Amount</u>	<u>Converted from (if Applicable)</u>
C\$●	●	●	●

(iii) CDOR Rate Advance

<u>Amount</u>	<u>Interest Period</u>	<u>Rollover Amount</u>	<u>Converted from (if Applicable)</u>
C\$●	●	●	●

(iv) () LIBOR Advance

<u>Amount</u>	<u>Interest Period</u>	<u>Rollover Amount</u>	<u>Converted from (if Applicable)</u>
US\$●	●	●	●
€\$●	●	●	●
£\$●	●	●	●

(v) () Letter of Credit [select FRONTED () OR SEVERAL ()]

<u>Amount</u>	<u>Maturity Date</u>	<u>Beneficiary</u>
C\$/US\$/€/£●	●	●

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

DATED this ● day of ●, 20●.

●

Per: _____

Title: _____

**SCHEDULE 3
FORM OF REPAYMENT/CANCELLATION NOTICE**

TO:

Attention: ●

FROM: ● (the "Borrower")

DATE: ●

This notice is delivered to you, as Applicable Agent, pursuant to section ● of that certain 2017 amended and restated credit agreement dated for reference ●, 20● between Finning International Inc. and certain of its subsidiaries as Borrowers, Royal Bank of Canada as Administrative Agent, RBC Europe Limited as European Agent, and those institutions from time to time party to such agreement as Lenders, as amended, supplemented, restated or replaced from time to time (the "Credit Agreement"). All defined terms set forth, but not otherwise defined, in this notice shall have the respective meanings set forth in the Credit Agreement, unless the context requires otherwise.

Notice is hereby given in accordance with section ● of the Credit Agreement that the undersigned wishes to cancel the aggregate Commitments by the amount of C\$● effective ● (date).

Notice is hereby given in accordance with section ● of the Credit Agreement that the undersigned commits to repay the ● under the Credit Facility in the amount of C\$/US\$/€/£● on ● (date).

DATED this ● day of ●, 20●.

●

Per: _____

Title: _____

SCHEDULE 4 - A
FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this "**Assignment and Assumption**") is dated as of the Effective Date set forth below and is entered into by and between the assignors identified below (the "**Assignor**") and the assignees identified below (the "**Assignee**"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the "**Credit Agreement**"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including without limitation any letters of credit and guarantees included in such facilities) and (ii) to the extent permitted to be assigned under Applicable Law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as, the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. **Assignor:** _____, as Canadian Lender and as the Lender named in Schedule 1, Part Two, _____, as Related European Lender, and _____, as Related US Lender.
2. **Assignee:** _____, as Canadian Lender and as the Lender named in Schedule 1, Part Two, _____, as Related European Lender, and _____, as Related US Lender; see Annex 2 attached hereto for address & contact information [and each is an affiliate/ Approved Fund of [identify Lender]][as applic.]].
3. **Borrower(s):** Finning International Inc. and certain of its subsidiaries
4. **Administrative Agent:** _____, as the administrative agent under the Credit Agreement

5. **Credit Agreement:** 2017 Amended and Restated Credit Agreement dated for reference _____ among inter alia the above-identified Borrower(s), the above-identified Administrative Agent, and the lenders party thereto

6. **Assigned Interest:**

Facility Assigned ²⁰	Aggregate Amount of Commitment/ Accommodations for all Lenders ²¹	Amount of Commitment/ Accommodations Assigned	Percentage Assigned of Commitment/ Accommodations ²²	CUSIP Number
—	C\$__ / [C\$__] [US\$__] [€__] [£__]	C\$__ / [C\$__] [US\$__] [€__] [£__]	__% / __%	

[Amounts/Percentages of Accommodations to be finalized by the Administrative Agent on the Effective Date]

7. **[Trade Date:** _____] ²³

8. **Effective Date:** _____, 20__ [To be finalized by the Administrative Agent and which shall be the effective date of recordation of transfer in the Register therefor].

9. **Additional Terms:** _____ [To be inserted if applicable].

[Execution page follows]

²⁰ Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g. "Credit Facility", "Revolving Credit Facility", "Term Loan Facility", etc.).

²¹ Amounts to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

²² Set forth, to at least 9 decimals, as a percentage of the Commitment/ Accommodations of all Lenders thereunder (without reflecting that the percentages will be higher for non-Swingline currencies).

²³ To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

The terms set forth in this Assignment and Assumption are hereby agreed to.

ASSIGNOR
Canadian Lender
[]

By: _____
Title:

Related European Lender
[]

By: _____
Title:

Related US Lender
[]

By: _____
Title:

ASSIGNEE
Canadian Lender
[]

By: _____
Title:

Related European Lender
[]

By: _____
Title:

Related US Lender
[]

By: _____
Title:

[CONSENTED TO AND] ²⁴ ACCEPTED:

**ROYAL BANK OF CANADA, as
Administrative Agent**

By: _____
Title:

[CONSENTED TO:] ²⁵

[NAME OF RELEVANT PARTY(IES)]

By: _____
Title:

²⁴ To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

²⁵ To be added only if the consent of the Borrower and/or other parties (e.g. L/C Issuer) is required by the terms of the Credit Agreement.

[2017 Amended and Restated Credit Agreement dated for reference _____ among inter alia Finning International Inc. and certain of its subsidiaries as borrowers, Royal Bank of Canada as administrative agent, and the lenders party thereto] ²⁶

**STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION**

10. Representations, Warranties and other Agreements.

Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Credit Facility Document ²⁷, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Facility Documents or any collateral thereunder, (iii) the financial condition of the Borrowers, any of their subsidiaries or affiliates or any other person obligated in respect of any Credit Facility Document or (iv) the performance or observance by the Borrowers, any of their subsidiaries or affiliates or any other person of any of their respective obligations under any Credit Facility Document.

Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement (subject to receipt of such consents as may be required under the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to section 8.1(14) thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Agents ²⁸ or any other Lender, and (v) if it is a Foreign Lender ²⁹, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently

²⁶ Describe Credit Agreement at option of Administrative Agent.

²⁷ The term "Credit Facility Document" should be conformed to the term used in the Credit Agreement.

²⁸ The term "Agents" should be conformed to the term used in the Credit Agreement.

²⁹ The concept of "Foreign Lender" should be conformed to the section in the Credit Agreement governing withholding taxes and gross-up.

and without reliance on the Agents, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Facility Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Credit Facility Documents are required to be performed by it as a Lender.

11. Payments. From and after the Effective Date, the Agents shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignee whether such amounts have accrued prior to, on or after the Effective Date. The Assignor and the Assignee shall make all appropriate adjustments in payments by the Agents for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves.
12. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law governing the Credit Agreement.

ANNEX 2 to Assignment and Assumption

[2017 Amended and Restated Credit Agreement dated for reference _____ among inter alia Finning International Inc. and certain of its subsidiaries as borrowers, Royal Bank of Canada as administrative agent, and the lenders party thereto]³⁰

ADDRESS AND CONTACT INFORMATION

Canada

LENDER	PRIMARY CONTACT	SECONDARY CONTACT
[_____] Canadian Lending Office: _____ _____	Contact: Tel: Fax: Email:	Contact: Tel: Fax: Email:

Europe

LENDER	PRIMARY CONTACT	SECONDARY CONTACT
[_____] European Lending Office: _____ _____	Contact: Tel: Fax: Email:	Contact: Tel: Fax: Email:

US

LENDER	PRIMARY CONTACT	SECONDARY CONTACT
[_____] US Lending Office: _____ _____	Contact: Tel: Fax: Email:	Contact: Tel: Fax: Email:

³⁰ Describe Credit Agreement at option of Administrative Agent.

**SCHEDULE 4 - B
LOAN MARKET DATA TEMPLATE**

Recommended Data Fields - At Close

The items highlighted in bold are those that Loan Pricing Corporation (LPC) deem essential. The remaining items are those that LPC has seen become more prominent over time as transparency has increased in the U.S. Loan Market.

<u>Company Level</u>	<u>Deal Specific</u>	<u>Facility Specific</u>
Issuer Name	Currency/Amount	Currency/Amount
Location	Date	Type
SIC (Cdn)	Purpose	Purpose
Identification Number(s)	Sponsor	Tenor
Revenue	Financial Covenants	Term Out Option
		Expiration Date
*Measurement of Risk	Target Company	Facility Signing Date
S&P Sr. Debt	Assignment Language	Pricing
Base Rate(s)/Spread(s)/BA/ LIBOR	Law Firms	Base
S&P Issuer	MAC Clause	Initial Pricing Level
Moody's Sr. Debt	Springing lien	Pricing Grid (tied to, levels)
Moody's Issuer	Cash Dominion	Grid Effective Date
Fitch Sr. Debt	Mandatory Prepays	Fees
Fitch Issuer	Restrict'd Payments	Participation Fee
S&P Implied	(Neg Covs)	(tiered also)
DBRS	Other Restrictions	Commitment Fee
Other Ratings		
*Industry Classification		Annual Fee
Moody's Industry		Utilization Fee
S&P Industry		LC Fee(s)
Parent		BA Fee
Financial Ratios		Prepayment Fee
		Other Fees to Market
		Security
		Secured/Unsecured
		Collateral and Seniority
		of Claim
		Collateral Value
		Guarantors
		Lenders names/titles
		Lender Commitment (\$)
		Committed/Uncommitted

Distribution method
Amortization Schedule
Borrowing Base/ Advance
Rates
New Money Amount
Country of Syndication
Facility Rating (Loss given
default)
S&P Bank Loan
Moody's Bank Loan
Fitch Bank Loan
DBRS
Other Ratings

* These items would be considered useful to capture from an analytical perspective

**SCHEDULE 5
FORM OF COMPLIANCE CERTIFICATE**

FINNING INTERNATIONAL INC.

Quarterly Compliance Certificate for the Financial Quarter ended ● (the "**Calculation Date**")

Reference is made to that certain 2017 amended and restated credit agreement dated for reference●, 20● between Finning International Inc. and certain of its subsidiaries as Borrowers, Royal Bank of Canada as Administrative Agent, RBC Europe Limited as European Agent, and those institutions from time to time party to such agreement as Lenders, as amended, supplemented, restated or replaced from time to time (the "**Credit Agreement**"). All defined terms set forth, but not otherwise defined, in this certificate shall have the respective meanings set forth in the Credit Agreement, unless the context requires otherwise.

We certify as follows:

13. As at the Calculation Date, the Total Debt to Total Capitalization Ratio was ●:1.0
14. [**** insert confirmation of assets, etc. held by RSubs ****]
15. No Default or Event of Default has occurred and is continuing.
16. In the case of any unaudited financial statements delivered herewith, such statements have been prepared in accordance with GAAP, save for the absence of notes and year-end and other customary audit adjustments; in the case of all financial statements delivered herewith, such statements present fairly the financial position of relevant person as at the date therein indicated and the results of its operations for the period ended on such date.
17. Each Borrower has made all payments of Indemnified Taxes and Other Taxes required to be made in accordance with section 9.2, details of which may be made available to either Agent following request therefor.

Calculation(s) Attached (all amounts in C\$000's).

DATED this ● day of ●, 20●.

FINNING INTERNATIONAL INC.

Per: _____
Name:
Title:

**SCHEDULE 6
REQUIRED NOTICE**

Prime Rate Advances	1 Business Day (except as otherwise provided with respect to Swingline Advances in section 2.1(6))
Base Rate Advances	1 Business Day (except as otherwise provided with respect to Swingline Advances in section 2.1(6))
US Prime Rate Advances	1 Business Day
Drawings	1 Business Day
CDOR Rate Advances (Can)	1 Business Day
CDOR Rate Advances (US)	2 Business Days
CDOR Rate Advances (Europe)	3 Business Days
LIBOR Advances (Europe)	3 Business Days (except 1 Business Day if the requested Advance is to be in Sterling)
LIBOR Advances (Can) and LIBOR Advances (US) denominated in US Dollars	3 Business Days
LIBOR Advances (Can) and LIBOR Advances (US) denominated in Euros or Sterling	4 Business Days
Letters of Credit	2 Business Days
Permanent reduction of Commitments	5 Business Days
Repayments of Obligations	2 Business Days (except as otherwise provided with respect to Swingline Advances in section 2.1(6))

**SCHEDULE 7
FORM OF OPINION**

●, 20●

Royal Bank of Canada

●

and

RBC Europe Limited

●

and

The Lenders party to the Credit Agreement
(as defined below)

and

Stikeman Elliott LLP
Barristers & Solicitors
1700 - 666 Burrard Street
Vancouver, British Columbia
V6C 2X8

Dear Sirs/Mesdames:

**Re: Finning International Inc. ("Finning") and certain of its subsidiaries -
2017 Amended and Restated Credit Agreement**

We have acted as counsel for Finning and as special Canadian counsel for Finning Chile S.A. ("FICSA") and the other borrowers party to the Credit Agreement as defined below (collectively with Finning and FICSA, the "**Borrowers**") in connection with the 2017 amended and restated credit agreement dated for reference ●, 20● (the "**Credit Agreement**") among Finning and certain of its subsidiaries as Borrowers, Royal Bank of Canada as Administrative Agent, RBC Europe Limited as European Agent and those institutions from time to time party to such agreement as Lenders. Capitalized terms used and not otherwise defined herein have the meanings ascribed to such terms in the Credit Agreement.

This opinion is delivered to you pursuant to Section 6.1(13) of the Credit Agreement.

Scope of Examination

For the purpose of providing the within opinions, we have examined:

- (a) originals, photocopies or electronically transmitted copies of the following executed documents:
 - (i) the Credit Agreement;
 - (ii) the 2017 amended and restated guarantee executed by Finning in favour of the Administrative Agent on ●, 20● (the "**Finning Guarantee**", and together with the Credit Agreement, the "**Finning Documents**"), and
- (b) the 2017 amended and restated guarantee executed by FICSA in favour of the Administrative Agent on ●, 20● (the "**FICSA Guarantee**", and together with the Finning Documents, the "Documents");
- (c) a copy of the Charter Documents of Finning certified by ● as Corporate Secretary of Finning (the "**Corporate Secretary**") on ● [OR, a certificate of ● as Corporate Secretary of Finning (the "**Corporate Secretary**") dated ● confirming that there have been no amendments or modifications to the Charter Documents of Finning since September 19, 2011];
- (d) a copy of resolutions of the directors of Finning passed as of ●, certified by the Corporate Secretary on ●;
- (e) a certificate of incumbency with respect to Finning executed by the Corporate Secretary on ●;
- (f) a certificate of compliance with respect to Finning issued by the Director appointed under the Canada Business Corporations Act dated ●;
- (g) a certificate of good standing with respect to Finning issued by the Office of the British Columbia Registrar of Companies (the "**Companies Office**") dated ●; and
- (h) originals, or copies certified or otherwise identified to our satisfaction, of other documents that we have considered relevant or necessary for the purpose of this opinion.

In addition, we have made, or caused to be made, such searches and investigations and considered such questions of law as we have considered relevant or necessary for the purpose of this opinion.

Assumptions

In this opinion, we have assumed the authenticity of all documents submitted to us as originals, the conformity with originals of all documents submitted to us as copies or facsimiles, the identity and capacity of all individuals acting or purporting to act as public officials, the accuracy and completeness of the records maintained by any office of public record and of all

representations, statements and other matters of fact set out referred to in certificates or documents received from such offices of public record, the reliability of all search results obtained by electronic transmission, and the accuracy of the result of any printed or computer search of any office of public record.

For the purposes of the opinion expressed in paragraph 4, we have assumed without independent enquiry:

- (i) that each Borrower other than Finning (each, a "Foreign Borrower") is a corporation duly incorporated and validly existing under the laws of its jurisdiction of formation;
- (j) that each Foreign Borrower has all necessary corporate power and authority to execute, deliver and perform its obligations under the Credit Agreement and, in the case of FICSA, the FICSA Guarantee;
- (k) that each Foreign Borrower has duly authorized such execution, delivery and performance by all necessary corporate action on its part;
- (l) that each Foreign Borrower has duly executed and delivered the Credit Agreement and, in the case of FICSA, the FICSA Guarantee;
- (m) that with respect to each Foreign Borrower, all declarations, filings, notices, consents or approvals, if any, required under the laws of its jurisdiction of incorporation in order for the Credit Agreement and, in the case of FICSA, the FICSA Guarantee, to be binding upon and enforceable against it, have been duly made, given or received, as applicable; and
- (n) that the Agents and each Lender have all requisite power and authority to execute and deliver the Credit Agreement and to perform their respective obligations thereunder, and that the Credit Agreement has been duly authorized, executed and unconditionally delivered by the Agents and each Lender and constitutes the legal, valid and binding obligation of each such Person, enforceable against such Person in accordance with its terms.

Subject Laws

We express no opinion on the laws of any jurisdiction other than the Province of British Columbia (the "Province") and the laws of Canada applicable therein, all as at the date hereof.

Opinion

Based upon and subject to the foregoing, and subject to the qualifications hereinafter set forth, we are of the opinion that:

1. *Corporate Matters - Finning.* Finning is a corporation duly incorporated and validly existing under the federal laws of Canada and is in good standing with respect to the filing of its annual returns with the Director under the Canada Business Corporations Act. Finning is duly registered to carry on business as an extraprovincial corporation under the British

Columbia Business Corporations Act and is in good standing with respect to the filing of annual returns with the British Columbia Registrar of Companies. Finning has the corporate power and capacity to enter into and perform its obligations under the Credit Agreement and the Finning Guarantee, including without limitation the power to borrow from the Lenders in accordance with the terms of the Credit Agreement and to provide financial assistance to the other Borrowers in accordance with the terms of the Finning Guarantee.

2. *Authorization, etc.* The execution, delivery and performance by Finning of the Finning Documents have been duly authorized by all necessary corporate action on the part of Finning. Each of the Finning Documents has been duly executed and delivered by Finning.

3. *Absence of Conflict.* The execution, delivery and performance by Finning of the Finning Documents do not:

- (a) violate any law of British Columbia or any law of Canada applicable therein; or
- (b) conflict with the Charter Documents of Finning.

4. *Enforceability.* Each of the Documents constitutes the legal, valid and binding obligation of each Borrower party thereto, enforceable against such Borrower in accordance with its terms.

5. *British Columbia and Federal Governmental Approvals.* No approval or authorization or other action by, and no notice to or filing with, any British Columbia or federal Canadian Governmental Authority is required for the due execution, delivery and performance by any Borrower of the Documents to which it is a party.

6. *Choice of Law.* The choice of the laws of the Province ("**Provincial Law**") as the governing law of each of the Documents will be upheld as a valid choice of law by the courts (each, a "**Court**") of the Province; provided that such choice of law is bona fide (in the sense that it is not made with a view to avoiding the consequences of the law of any other jurisdiction which has a closer and more substantial connection to the Documents), and provided that such choice of law is not contrary to public policy, as that term is understood under the Provincial Law. To our knowledge, no public policy would be offended by recognition of this choice of law.

7. *Enforcement of Judgments.* Provincial Law would permit an action to be brought in a Court based upon a final and conclusive subsisting monetary in personam judgment of a court of Chile, Argentina, Uruguay, the United Kingdom or Ireland (each a "Foreign State", and such judgment a "**Foreign Judgment**") obtained in favour of an Agent or Lender as against any Borrower for a sum certain in money with respect to a claim pursuant to the Documents. A Court would give a judgment enforcing the Foreign Judgment without reconsideration of the merits if:

- (a) there was a real and substantial connection between the parties to the Foreign Judgment or the foreign cause of action and the Foreign State;
- (b) the Foreign Judgment:

- (i) is unsatisfied and not impeachable as void or voidable under the laws of the Foreign State;
 - (ii) is not under appeal and the time limit for appeal under the laws of the Foreign State has expired;
 - (iii) if a default judgment, does not contain a manifest error on the face of the Foreign Judgment;
 - (iv) was not obtained in a manner contrary to natural justice, and the Borrower is not able to prove that either (A) the Agent or Lender had committed a fraud on the court of the Foreign State leading that court to conclude that it had jurisdiction under the laws of the Foreign State when it did not, or (B) there are new facts, which the Borrower could not previously have discovered exercising due diligence, suggesting that the Agent or Lender had obtained the Foreign Judgment by fraud going to its merits;
 - (v) is not directly or indirectly for a claim in respect of any law of any jurisdiction which under Provincial Law would be characterized as a foreign revenue, penal, expropriatory or other public law;
 - (vi) is not contrary to the public policy of the Province; and
 - (vii) is not contrary to any order made by the Attorney General of Canada under the *Foreign Extraterritorial Measures Act* (Canada) or the *Competition Tribunal under the Competition Act* (Canada); and
- (c) the action to enforce the Foreign Judgment is commenced within the relevant limitation period under Provincial Law.

8. *Submission to Jurisdiction.* The submission by the Borrowers to the non-exclusive jurisdiction of the Courts contained in Section 12.6 of the Credit Agreement and Section 24 of each of the Finning Guarantee and the FICSA Guarantee (collectively, the “**Facility Guarantees**”) respectively would be recognized and given effect by the Courts as a valid submission to the non-exclusive jurisdiction of such Courts, provided that the provisions of the Credit Agreement and the respective Facility Guarantees respecting service of process on the Borrowers are complied with.

9. *No Immunity.* Finning is subject to the civil and commercial law of the Province with respect to its obligations under the Finning Documents and it does not have the benefit of any general right of immunity, whether sovereign immunity or otherwise, from any action, suit, proceeding, execution or set-off in respect of its obligations under the Finning Documents.

Qualifications

The opinions expressed herein are subject to the following qualifications:

(a) *Bankruptcy/Insolvency.* The rights and remedies set forth in the Documents are subject to applicable bankruptcy, reorganization, winding up, insolvency, fraudulent preference and conveyance, moratorium and other similar laws generally affecting the enforcement of creditors' remedies.

(b) *Equitable Remedies.* No opinion is expressed as to the availability of equitable remedies, including that of specific performance or injunctive relief for the enforcement of any provision of the Documents. In particular, a court has equitable and statutory powers to stay proceedings and the execution of judgments and nothing in this opinion is to be taken as indicating that the remedy of, or any order for, specific performance or the issuance of any injunction will be available other than through the exercise of the discretion of a court. No opinion is given with respect to the availability or enforceability of the remedy of contractual power of sale.

(c) *Equitable Principles Limitation.* Enforceability of the Documents is limited by equitable principles such as the following:

- (ii) rules of court procedure which affect rights, powers, privileges and remedies of creditors generally;
- (iii) waiver, laches, estoppel or unconscionability;
- (iv) consideration of the impracticability or impossibility of performance at the time of attempted enforcement;
- (v) a waiver of any right by or against a person not a party to the Documents; and
- (vi) the ability to recover certain costs, damages and expenses being subject to the discretion of a court, regardless of whether enforcement is considered in equity or at law.

(d) *Governmental Approvals.* The opinion set forth in paragraph 5 does not extend to approvals or authorizations required to operate the businesses carried on by any Borrower.

(e) *Severability.* We express no opinion as to the enforceability of any provision of the Documents that purports to sever any provision that is invalid or unenforceable under applicable law without affecting the validity or enforceability of any other provision of the Documents, since such a provision may be enforced only in the discretion of a court of competent jurisdiction.

(f) *Inherent Power of the Courts.* A court in British Columbia may reserve to itself an inherent power to decline to hear an action if it is contrary to public policy (as such phrase is understood in British Columbia) for it to do so, or if it is not the proper forum to hear such action or concurrent proceedings are brought elsewhere.

(g) *Judgment Currency.* The *Currency Act* (Canada) precludes any court in Canada from giving any judgment expressed in any currency other than Canadian currency. Any judgment given in a Canadian court on a foreign currency debt must be expressed in Canadian currency,

and may be subject to conversion to Canadian currency as at the due date of the debt. Such rate of conversion may not be the rate in effect on the date of payment.

(h) *Post-Judgment Interest.* Under the *Court Order Interest Act* (British Columbia) or *Foreign Money Claims Act* (British Columbia) post judgment interest on any judgment awarded in British Columbia may be limited to the rate prescribed under that Act.

(i) *Indemnities.* The enforceability of any indemnity contained in the Documents may be limited by applicable law to the extent that:

(i) it directly or indirectly relates to liabilities imposed on a Lender by law and a court determines that it would be contrary to public policy to require a Borrower to indemnify the Lender in respect of such liabilities; or

(ii) it constitutes the indirect enforcement of a foreign revenue or penal law.

(j) *Enforcement.* Whenever an obligation, act, agreement or instrument is expressed to be "legal, valid and binding", "effective", "enforceable" or "enforceable in accordance with its terms" or words of like meaning, we mean that such obligation, act, agreement or instrument is not incapable of being given legal effect. We express no opinion as to such factors as financial capacity or continued existence which may be necessary to make such obligation, act, agreement or instrument enforceable in fact.

This opinion is given pursuant to the Credit Agreement, relates exclusively to the financing contemplated by the Credit Agreement, and is for the sole use and benefit of the addressees and their successors and assigns permitted by the Credit Agreement. Accordingly, it cannot be relied upon by other parties or used in other transactions without our express written consent.

Yours very truly,

**SCHEDULE 8
FORM OF POA LETTER OF CREDIT**

[Letterhead of Issuing Bank or
Form for Letters of Credit]

Irrevocable Letter of Credit No.:

Date of Issue:

Expiry Date:

Place of Expiry:

Amount:

Beneficiary: Name: _____

Address: _____

Attn: _____

Fax No.: _____

Applicant: Name: _____

Address: _____

Attn: _____

The banks and other financial institutions named under the heading "Issuing Lenders" on the signature pages (collectively, the "**Issuing Lenders**" and, individually, an "Issuing Lender") hereby establish this irrevocable Letter of Credit in your favour as beneficiary for drawings up to _____ [_____ [Canadian Dollars, US Dollars, Euros or Sterling] in aggregate amount. This Letter of Credit is issued, presentable and payable at our office at [address], or other address of which notice is given as described below, and expires at our close of business 5:00 PM (local time) on _____ (the "**Expiry Date**"). The aggregate amount available under this Letter of Credit shall be reduced immediately following the honouring of any draft drawn hereunder in an amount equal to the amount of such draft. This Letter of Credit cannot be modified or revoked without your consent. ●, in addition to acting in its individual capacity as an Issuing Lender hereunder, is acting as an agent for the other Issuing Lenders hereunder (in such capacity, together with its successors in such capacity, the "**Agent**").

Funds shall be available under this Letter of Credit upon presentation to the Agent of a draft substantially in the form of Exhibit A attached hereto, the original of this Letter of Credit and the following: [describe any other requirements for a drawing].

Each Issuing Lender hereby undertakes, severally according to the percentage set forth next to its signature below (such Issuing Lender's "**Rateable Portion**") and not jointly or jointly and severally with any other Issuing Lender, that drafts drawn under and in strict compliance with the terms of this Letter of Credit will be duly honoured by paying to the Agent such Issuing Lender's share (according to its Rateable Portion) of the amount of such draft. The Agent hereby undertakes that any amount so received by it will be made available to you promptly by remitting the payment so received, in like funds, in accordance with your instructions.

The obligation of each Issuing Lender under this Letter of Credit is several and not joint or joint and several and shall at all times be an amount equal to such Issuing Lender's Rateable Portion

of the aggregate undrawn amount of this Letter of Credit (and of each drawing under this Letter of Credit).

This Letter of Credit has been executed and delivered by the Agent in the name and on behalf of, and as attorney-in-fact for, each Issuing Lender. The Agent is authorized to act under this Letter of Credit as the agent of each Issuing Lender in order to:

- (a) receive drafts, other demands for payment and other documents presented by you under this Letter of Credit;
- (b) determine whether such drafts, demands and documents are in compliance with the terms and conditions of this Letter of Credit;
- (c) notify such Issuing Lender and the applicant that a valid drawing has been made and the date that the related disbursement is to be made;
- (d) notify you that this Letter of Credit will not be renewed. [Note: insert this clause only if the Letter of Credit provides that it will be renewed automatically unless notice to the contrary is given]

The Agent undertakes that it will promptly notify each Issuing Lender and the applicant of any valid drawing under this Letter of Credit.

You agree that the Agent shall have no obligation or liability to honour any drawing under this Letter of Credit (subject to the liability of ● in its capacity as an Issuing Lender and the obligation of the Agent to remit funds paid to the Agent from an Issuing Lender, as set forth above) and that neither any Issuing Lender nor the Agent shall be responsible for the failure of any other Issuing Lender to make a payment to be made by such other Issuing Lender hereunder.

This Letter of Credit sets forth in full the terms of our and each Issuing Lender's undertaking, and such undertaking is not subject to any agreement, requirement or qualification and shall not in any way be amended, modified, amplified or limited by reference to any document, instrument or agreement referred to herein or in which this Letter of Credit is referred to or to which this Letter of Credit relates (other than the annexes attached hereto, if any), and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement. The obligation of each Issuing Lender under this Letter of Credit is the individual obligation of such Issuing Lender and is in no way contingent upon reimbursement of any drawing hereunder or upon any Issuing Lender's ability to perfect a lien or security interest.

Each Issuing Lender's obligation to pay is irrevocable and, subject to compliance with the requirements hereof, unconditional and, in furtherance and support thereof and without limiting the irrevocable and unconditional nature of each Issuing Lender's obligations to the beneficiary hereunder, any demand by the beneficiary shall be honoured without any inquiry as to the rights, claims or defences (legal or equitable) of the applicant against the beneficiary and without regard to any other defence to the beneficiary's demand for payment, arising as a result of any dispute between the beneficiary and the applicant or between the applicant and the Issuing Lenders.

This Letter of Credit shall be governed by and construed in accordance with the law of the Province of British Columbia (without reference to choice of law doctrine) and is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500 (the "Uniform Customs"). In the event of any conflict between the law of the Province of British Columbia and the Uniform Customs, the Uniform Customs shall control. Notwithstanding Article 17 of the Uniform Customs, if this Letter of Credit expires during an interruption of business as described in said Article 17, each Issuing Lender agrees to effect payment if this Letter of Credit is drawn against within 30 days after the resumption of business by the Agent. [insert the immediately preceding sentence, if and as applicable] [as appropriate, reference may be made to ISP98]

This Letter of Credit [may not be assigned or transferred, except that it] [insert the immediately preceding clause, if and as applicable] shall inure to the benefit of any successor by operation of law of the named beneficiary hereof, including, without limitation, any liquidator, receiver or trustee for such named beneficiary.

All communications regarding this Letter of Credit should be addressed to ●, [address], Attention: _____, referencing Irrevocable Letter of Credit No. _____. Upon or in anticipation of closure of the place where this Letter of Credit is presentable and payable, the Agent may give notice to the beneficiary, not less than 30 days before the Expiry Date, of another reasonable place where this Letter of Credit shall be presentable and payable, and if the Agent does so then this Letter of Credit shall be presentable and payable at that place and not any previously designated place.

An Issuing Lender may, subject to the replacement thereof with a new Lender having the minimum credit rating set forth below or with your consent (as applicable), cease to be a party to, and a new Lender may become a party to, this Letter of Credit, and the Rateable Portion of an Issuing Lender may change, but no such event will reduce the then available amount under this Letter of Credit. Upon the occurrence of any such event, the Agent will provide prompt notice to you of such event, including any change in the identities of the Issuing Lenders severally but not jointly or jointly and severally liable in respect of the aggregate undrawn amount of this Letter of Credit (based upon their respective Rateable Portions thereof) and any change in such Rateable Portions. If a new Lender becomes a party to this Letter of Credit and the credit rating of such new Lender (or its parent) is lower than A3 as rated by Moody's Investors Service, Inc. or the equivalent by any other nationally recognized rating agency, the consent of the beneficiary to such change shall be required. A change in Rateable Portions or Issuing Lenders shall be documented by an amendment of this Letter of Credit substantially in the form attached as Exhibit B.

Very truly yours,

●,
as Agent

By: _____
Name:
Title:

Rateable Portion:

_____ %

_____ %

_____ %

_____ %

_____ %

ISSUING LENDERS:

●

By: _____

Name:

Title:

[NAME OF LENDER]

by ●, as Attorney-in-Fact

By: _____

Name:

Title:

[NAME OF LENDER]

by ●, as Attorney-in-Fact

By: _____

Name:

Title:

[NAME OF LENDER]

by ●, as Attorney-in-Fact

By: _____

Name:

Title:

[NAME OF LENDER]

by ●, as Attorney-in-Fact

By: _____

Name:

Title:

EXHIBIT A
to
FORM OF POA LETTER OF CREDIT

FORM OF DRAFT

[Date, place]

At sight pay to the order of _____ the sum of _____
_____ [Canadian Dollars, US Dollars, Euros or Sterling]

To ● (insert address) as Agent for the financial institutions listed immediately below ("Issuing Lenders"), each severally and not jointly or jointly and severally and each with respect to only the percentage of the amount drawn herein set out opposite its name:

- % [name of Issuing Lender]

Except in its individual capacity as an Issuing Lender, the Agent shall have no obligation or liability hereunder.

Drawn under letter of credit no. _____.

[Beneficiary]

(signature) _____

EXHIBIT B
TO
FORM OF POA LETTER OF CREDIT

FORM OF AMENDMENT

[Date]

Irrevocable Letter of Credit No.:

Date of Issue:

Expiry Date:

Place of Expiry:

Amount:

Beneficiary: Name: _____

Address: _____

Attn: _____

Fax No.: _____

Applicant: Name: _____

Address: _____

Attn: _____

Reference is made to the above-noted letter of credit (the "Letter of Credit"). Please be advised that the Letter of Credit is hereby amended in accordance with the final paragraph thereof, as follows:

18. Change of Issuing Lenders [Insert if applicable]

[Insert name of financial institution], which has a credit rating of [insert rating and rating agency], has become a party to the Letter of Credit and an Issuing Lender.

The following banks and financial institutions have ceased to be parties to the Letter of Credit and are no longer Issuing Lenders:

[Insert names]

19. Change in Rateable Portions

As of the date of this amendment, the Issuing Lenders and their respective Rateable Portions are as set out below.

All other terms and conditions of the Letter of Credit remain unchanged. Kindly return the duplicate copy of this letter to acknowledge your receipt of this amendment.

Receipt acknowledged by: Name: _____ Title: _____ Date: _____
--

Rateable Portion:

_____ %

_____ %

_____ %

_____ %

_____ %

Very truly yours,

●,
as Agent

By: _____
Name:
Title:

ISSUING LENDERS:

●
By: _____
Name:
Title:

[NAME OF LENDER]
by ●, as Attorney-in-Fact

By: _____
Name:
Title:

[NAME OF LENDER]
by ●, as Attorney-in-Fact

By: _____
Name:
Title:

[NAME OF LENDER]
by ●, as Attorney-in-Fact

By: _____
Name:
Title:

[NAME OF LENDER]
by ●, as Attorney-in-Fact

By: _____
Name:
Title:

**SCHEDULE 9
FORM OF POWER OF ATTORNEY**

[to be specified]

SCHEDULE 10
MANDATORY COSTS RATE

For the purposes of this agreement, the cost of compliance with existing requirements of the Bank of England and/or the Financial Services Authority and/or the European Central Bank (or any other authority which replaces all or any of their functions) will be the rate determined by the European Agent to be the arithmetic mean (rounded upwards, if necessary, to four decimal places) of the respective rates notified by each of the Related European Lenders to the European Agent and calculated in accordance with the following formula:

in relation to a LIBOR Advance in Sterling
$$\frac{AB + C(B-D) + (E \times 0.01)}{100 - (A+C)} \% \text{p.a.}$$

and

in relation to a LIBOR Advance in Euro
$$\frac{(E \times 0.01)}{300} \% \text{p.a.}$$

where:

A is the percentage of the Related European Lender's eligible liabilities (in excess of any stated minimum) which the Bank of England requires the Related European Lender to hold on a non-interest bearing deposit account in accordance with its cash ratio requirements;

B is the rate at which Sterling deposits are offered by the Related European Lender to leading banks in the London Interbank market at or about 11:00 a.m., London time, on that day for the relevant Interest Period;

C is the percentage of the Related European Lender's eligible liabilities which the Bank of England requires the Related European Lender to place as a special deposit;

D is the interest rate per annum allowed by the Bank of England on special deposits;

E is the rate payable by such Related European Lender to the Financial Services Authority pursuant to the Fees Regulations and expressed in pounds per £1,000,000 of the Fee Base of such Related European Lender.

For the purposes of this schedule 10:

"**eligible liabilities**" and "**special deposits**" have the meanings given to them at the time of application of the formula by the Bank of England;

"**Fees Regulations**" means the Lending Supervision (Fees) Regulations 2000 or such Applicable Law or regulation as may be in force from time to time in respect of the payment of fees for banking supervision; and

"**Fee Base**" has the meaning given to it and will be calculated in accordance with the Fees Regulations.

In the application of the formula, A, B, C and D are included in the formula as figures and not as percentages, e.g. if A = 0.5% and B = 15%. AB is calculated as 0.5 x 15.

If a Related European Lender does not supply a rate to the European Agent, the applicable Mandatory Costs Rate will be determined on the basis of the rate(s) supplied by the remaining Related European Lenders.

The formula is applied on the first day of each Interest Period of the relevant Advance.

If the European Agent determines that a change in circumstances has rendered, or will render, the formula inappropriate, the European Agent (after consultation with the Related European Lenders) shall notify Finning of the manner in which the Mandatory Costs Rate will be subsequently be calculated. The manner of calculation so notified by the European Agent shall, in the absence of manifest error, be binding on all parties.

SCHEDULE 11
PAYMENT ACCOUNTS AND CONCENTRATION ACCOUNTS

Part 1 - Payment Accounts

Canadian Borrowers and US Borrowers:

[]

European Borrowers:

[]

Part 2 - Concentration Accounts

Finning:

[]

SCHEDULE 12
FORM OF DESIGNATION/TERMINATION OF RESTRICTED SUBSIDIARY

TO: ●

Attention: ●

FROM: Finning International Inc.

DATE: ●

This notice is delivered to you, as Administrative Agent, pursuant to section 1.4 of that certain 2017 amended and restated credit agreement dated for reference ●, 20● between Finning International Inc. and certain of its subsidiaries as Borrowers, Royal Bank of Canada as Administrative Agent, RBC Europe Limited as European Agent, and those institutions from time to time party to such agreement as Lenders, as amended, supplemented, restated or replaced from time to time (the "**Credit Agreement**"). All defined terms set forth, but not otherwise defined, in this notice shall have the respective meanings set forth in the Credit Agreement, unless the context requires otherwise.

Finning hereby represents and warrants as follows:

- (a) all of the representations and warranties set forth in Article 7 of the Credit Agreement and in every other Credit Facility Document, other than those which by their terms are made only as of a specific date, are true and correct in all material respects as at the date hereof [or, if such is not the case, set forth details of any such circumstances];
- (b) all of the representations and warranties set forth in Article 7 of the Credit Agreement and in every other Credit Facility Document, other than those which by their terms are made only as of a specific date, will be true and correct immediately after the designation or termination requested in paragraph (e) below, as though made on and as of the date hereof immediately after such designation or termination;
- (c) no Default or Event of Default has occurred and is continuing prior to the designation or termination requested in paragraph (e) below [or, if such is not the case, set forth details of any such circumstances];
- (d) no Default or Event of Default will be continuing after the designation or termination requested in paragraph (e) below.

Finning hereby [select as appropriate]:

(e) designates ●, a ● formed under the laws of ●, as a Restricted Subsidiary and, in the event that such designation is required to be made in accordance with section 8.1(17), delivers herewith a calculation confirming that Finning and the Restricted Subsidiaries would have been in compliance with section 8.1(17) at and for the period ended on the most recent Calculation Date on a pro forma basis had ● been a Restricted Subsidiary at and for the period ended on the such Calculation Date;

or

(e) terminates the designation of ● as a Restricted Subsidiary, and delivers herewith a calculation confirming that Finning and the Restricted Subsidiaries would have been in compliance with section 8.1(17) at and for the period ended on the most recent Calculation Date on a pro forma basis had ● not been a Restricted Subsidiary at and for the period ended on the such Calculation Date.

DATED this ● day of ●, 20●.

FINNING INTERNATIONAL INC.

Per: _____

Title: _____

**SCHEDULE 13
FORM OF BORROWER JOINDER**

**JOINDER AGREEMENT
(Borrower Joinder to Credit Agreement – Finning International *et. al.*)**

JOINDER AGREEMENT dated for reference October 30, 2017 to the Credit Agreement (as defined below) made by [New-Borrower-Name] (the "**New Borrower**") and Finning International Inc. ("**Finning**") to and in favour of each of the other parties to the Credit Agreement.

WHEREAS pursuant to a credit agreement dated for reference December 6, 2005 (the "**Original Credit Agreement**") between Finning International Inc. ("**Finning**") and certain of its subsidiaries as borrowers, Royal Bank of Canada as administrative agent (in such capacity, the "**Administrative Agent**"), Royal Bank of Canada Europe Limited as European agent, and certain institutions party thereto as lenders (the "**Lenders**"), as such agreement has been supplemented, amended and restated, including without limitation by an amended and restated credit agreement dated for reference October 30, 2017 [as amended by amendments dated _____], (such Original Credit Agreement, as so supplemented, amended and restated and as the same may be further supplemented, amended and restated from time to time, the "**Credit Agreement**"), the Lenders have made the Credit Facilities available to the Borrowers on and subject to the terms and conditions set out therein;

AND WHEREAS section 2.1(11) of the Credit Agreement provides that, subject to certain conditions, subsidiaries of Finning may from time to time be added as Canadian Borrowers, European Borrowers and/or US Borrowers, by the proposed borrower and Finning executing and delivering an agreement in the form of this joinder agreement;

NOW THEREFORE, in consideration of the foregoing premises, the continuing agreement of the Lenders to make the Credit Facility available, the sum of \$10.00 in lawful money of Canada now paid by the Administrative Agent to the New Borrower and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the New Borrower and Finning hereby agrees with each of the other parties to the Credit Agreement as follows:

Section 1 Defined Terms, Interpretation, etc. Terms defined in the Credit Agreement and not otherwise defined in this joinder agreement shall have the same meanings herein, unless there is something in the subject matter or context inconsistent therewith. The following provisions of the Credit Agreement are incorporated herein mutatis mutandis: sections 1.2, 12.6, 12.7, 12.12, 12.13, 12.14 and 12.15.

Section 2 Review of Credit Agreement. Each New Borrower has received a copy of, and has reviewed, the Credit Agreement.

Section 3 Joinder. Effective from and after the date this joinder agreement is executed and delivered to the Administrative Agent and the conditions precedent set out in section 2.1(11) of the Credit Agreement have been satisfied, the New Borrower is, and shall be deemed for all purposes, to be [a Canadian Borrower] [a European Borrower] [a US Borrower] under the

Credit Agreement with the same force and effect, and subject to the same rights, agreements, representations, covenants, indemnities, liabilities and obligations, as if the New Borrower was, effective as of the date of this joinder agreement, an original party to the Credit Agreement as [a Canadian Borrower] [a European Borrower] [a US Borrower]. For greater certainty (but without limitation), the New Borrower shall make all payments required by the Credit Agreement in respect of all Accommodations obtained by the New Borrower from time to time under the Credit Facility. Each reference to [*the "Canadian Borrowers" or a "Canadian Borrower"*] [*the "European Borrowers" or a "European Borrower"*] [*the "US Borrowers" or a "US Borrower"*] in the Credit Agreement shall be deemed to include the New Borrower. The terms and provisions of the Credit Agreement are incorporated by reference in this joinder agreement.

Section 4 Representations and Warranties. Without limiting the foregoing joinder, the New Borrower (i) represents and warrants to the Lenders as set forth in Article 7 of the Credit Agreement, (ii) acknowledges that the Lenders are relying thereon in consenting to the foregoing joinder and providing Accommodations from time to time, (iii) agrees that no investigation at any time made by or on behalf of the Lenders shall diminish in any respect whatsoever their right to rely thereon, and (iv) agrees that all representations and warranties shall be valid and effective as of the date when given or deemed to have been given (including, without limitation, as of the date of this joinder agreement) and to such extent shall survive the execution and delivery of this joinder agreement and the provision of Accommodations from time to time.

Section 5 Continuing Effect. Except to the extent expressly supplemented hereby, all terms of the Credit Agreement shall remain in full force and effect, unamended.

Section 6 WAIVER OF JURY TRIAL. THE NEW BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS JOINDER AGREEMENT, THE CREDIT AGREEMENT OR ANY OTHER CREDIT FACILITY DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). THE NEW BORROWER (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO OR RELY ON IN THIS JOINDER AGREEMENT, THE CREDIT AGREEMENT AND THE OTHER CREDIT FACILITY DOCUMENTS BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS IN THIS SECTION AND THE CORRESPONDING SECTION OF THE CREDIT AGREEMENT.

[execution page follows]

IN WITNESS WHEREOF each of the undersigned has duly executed this joinder agreement as of the day and year first above written.

NEW BORROWER:

[NEW-BORROWER-NAME]

By: _____
Authorized Signatory

By: _____
Authorized Signatory

FINNING:

FINNING INTERNATIONAL INC.

By: _____
Authorized Signatory

By: _____
Authorized Signatory